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Mandy Vigil  
February 27, 2023

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Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

**EXHIBIT**

**P6**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

CASE NO. 1:22-cv-00222-JB-KK

VOTER REFERENCE FOUNDATION, )  
LLC, )  
 )  
Plaintiff, )  
 )  
VS. )  
 )  
RAUL TORREZ, in his official )  
capacity as New Mexico )  
Attorney General, and )  
MAGGIE TOULOUSE OLIVER, in )  
her official capacity as New )  
Mexico Secretary of State, )  
 )  
Defendants. )

The deposition upon oral examination of  
MANDY VIGIL, a witness produced and sworn  
before me, Valerie Fillenwarth, RPR, a Notary  
Public in and for the County of Johnson, State  
of Indiana, taken on behalf of the Plaintiff,  
via Zoom, on February 27, 2023, commencing at  
the hour of 12:00 p.m., EST, pursuant to the  
Federal Rules of Civil Procedure.

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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. Edward D. Greim</p> <p>5 Mr. Jackson Tyler</p> <p>6 GRAVES GARRETT, LLC</p> <p>7 1100 Main Street, Suite 2700</p> <p>8 Kansas City, Missouri 64105</p> <p>9 816.256.3181</p> <p>10 edgreim@gravesgarrett.com</p> <p>11</p> <p>12 FOR THE DEFENDANTS:</p> <p>13 Ms. Erin Lecocq</p> <p>14 Ms. Kelsey Schremmer</p> <p>15 Office of the New Mexico Attorney General</p> <p>16 408 Galisteo Street</p> <p>17 Santa Fe, New Mexico 87501</p> <p>18 505.490.4060</p> <p>19 elecocq@nmag.gov</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (Continued.)</p> <p>2</p> <p>3 INDEX OF EXHIBITS</p> <p>4</p> <p>5 Page</p> <p>6 Deposition Exhibit No.:</p> <p>7 9- November 17, 2022 e-mail string... 180</p> <p>8 10- House Bill 4..... 202</p> <p>9 11- Agency Bill Analysis, 2022</p> <p>10 Regular Session..... 211</p> <p>11</p> <p>12 12- January 31, 2023 e-mail string</p> <p>13 with attachment..... 220</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 INDEX OF EXAMINATION</p> <p>2 Page</p> <p>3 DIRECT EXAMINATION..... 5</p> <p>4 Questions by Mr. Greim</p> <p>5</p> <p>6</p> <p>7 INDEX OF EXHIBITS</p> <p>8 Page</p> <p>9 Deposition Exhibit No.:</p> <p>10 1- Amended Notice of Deposition..... 6</p> <p>11 2- Response of Defendant Secretary of</p> <p>12 State Maggie Toulouse Oliver, in</p> <p>13 her Official Capacity, to Plaintiff</p> <p>14 Voter Reference Foundation's Third</p> <p>15 Interrogatories and Requests for</p> <p>16 Production..... 9</p> <p>17</p> <p>18 3- Morgan Lee article titled</p> <p>19 "New Mexico challenges effort to</p> <p>20 post voter rolls online."..... 40</p> <p>21</p> <p>22 4- December 20, 2021 letter to Anne</p> <p>23 Kelly from Sharon Pino with</p> <p>24 attachments..... 51</p> <p>25</p> <p>5- February 21, 2023 e-mail string... 85</p> <p>6- Response of Defendant Secretary of</p> <p>State Maggie Toulouse Oliver, in</p> <p>her Official Capacity, to</p> <p>Plaintiff Voter Reference</p> <p>Foundation's Second Interrogatories,</p> <p>Requests for Production, and</p> <p>Requests for Admission..... 125</p> <p>7- March 11, 2022 e-mail string..... 163</p> <p>8- May 27, 2022 letter to</p> <p>Secretary Toulouse Oliver from</p> <p>Edward Greim with attachments..... 168</p>	<p>1 MANDY VIGIL,</p> <p>2 having been first duly sworn to tell the truth,</p> <p>3 the whole truth, and nothing but the truth,</p> <p>4 testified as follows:</p> <p>5 DIRECT EXAMINATION,</p> <p>6 QUESTIONS BY MR. EDWARD D. GREIM:</p> <p>7 Q. Good morning, Ms. Vigil. Good to see you</p> <p>8 again. Rather than going through all the</p> <p>9 background questions, which we've already done</p> <p>10 with you before, I would just ask you, has --</p> <p>11 has anything about your background changed</p> <p>12 since we last spoke back in the summer of last</p> <p>13 year?</p> <p>14 A. No.</p> <p>15 Q. Okay. You have the same job title?</p> <p>16 A. I do.</p> <p>17 Q. You have the same duties?</p> <p>18 A. I do.</p> <p>19 Q. No additional classes or expertise since that</p> <p>20 time?</p> <p>21 A. No.</p> <p>22 Q. Okay. Now, I understand that, unlike your</p> <p>23 prior testimony, you're here today to answer</p> <p>24 questions on behalf of the secretary of state's</p> <p>25 office, do you understand that?</p>

<p style="text-align: right;">Page 10</p> <p>1 record just real fast?</p> <p>2 MR. GREIM: Okay. Sure.</p> <p>3 (WHEREUPON, at this time a discussion was</p> <p>4 held off the record.)</p> <p>5 BY MR. GREIM:</p> <p>6 Q. So let me ask you, Ms. Vigil, have you studied</p> <p>7 yet the responses to Interrogatories 10</p> <p>8 through 17? Have you seen these responses</p> <p>9 before?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Okay. So have you -- have you verified their</p> <p>12 accuracy?</p> <p>13 <b>A. No, I haven't.</b></p> <p>14 Q. Well, then, I think we're going to have to</p> <p>15 wait. You're going to need to read these and</p> <p>16 see if you agree with them. And if you do,</p> <p>17 then, you know, we'll need a sworn response.</p> <p>18 If you don't agree with them, I guess we'll</p> <p>19 need revisions to whatever you want to change.</p> <p>20 <b>A. Okay.</b></p> <p>21 Q. So you -- you can't tell us that these are</p> <p>22 really the responses of your office, is that</p> <p>23 correct?</p> <p>24 <b>A. Not without reading them.</b></p> <p>25 Q. Okay. I'm going to direct you to certain</p>	<p style="text-align: right;">Page 12</p> <p>1 <b>A. So the secretary of state's office is</b></p> <p>2 <b>responsible for maintaining a statewide voter</b></p> <p>3 <b>registration database, and that includes all of</b></p> <p>4 <b>the voter data.</b></p> <p>5 Q. Where does the voter data come from?</p> <p>6 <b>A. Comes from voter registration applications that</b></p> <p>7 <b>are submitted by an individual and processed by</b></p> <p>8 <b>a county clerk.</b></p> <p>9 Q. Okay. Who has access to that database?</p> <p>10 <b>A. All election administrators within the state of</b></p> <p>11 <b>New Mexico have access, so secretary of state's</b></p> <p>12 <b>office, there are certain individuals, and</b></p> <p>13 <b>county clerk offices.</b></p> <p>14 Q. Does anyone else have access to the database,</p> <p>15 like a code to get in and view information or</p> <p>16 alter data?</p> <p>17 <b>A. No.</b></p> <p>18 Q. But I ask you that, it may seem like an odd</p> <p>19 question, but in some states they give out</p> <p>20 something that they call key codes or things</p> <p>21 like that, they give out a certain number of</p> <p>22 those. And that's within the discretion of the</p> <p>23 county clerk to then distribute those. So</p> <p>24 not -- not everybody who gets them is actually</p> <p>25 a government official. So my question is, do</p>
<p style="text-align: right;">Page 11</p> <p>1 statements in here as we go and I'm going to</p> <p>2 ask for your position on these. Let me ask</p> <p>3 you, during your prep for today, you did not</p> <p>4 review these responses?</p> <p>5 <b>A. I have not reviewed these yet, no.</b></p> <p>6 MR. GREIM: Okay. We're back on record,</p> <p>7 correct?</p> <p>8 THE COURT REPORTER: Yeah.</p> <p>9 BY MR. GREIM:</p> <p>10 Q. Okay. Well, I'll just ask you about certain</p> <p>11 things in here and we'll see if you agree, and</p> <p>12 if you don't, we'll just -- we'll just revisit</p> <p>13 it. But this will be the fastest way, I think,</p> <p>14 to handle this. And I know they look like</p> <p>15 they're long, but most of these start with an</p> <p>16 objection and then the answer starts lower</p> <p>17 down.</p> <p>18 And so I'm not going to take you through</p> <p>19 the objection. I'm going to focus on the</p> <p>20 provision of actual information here. But I'm</p> <p>21 glad we did that here at the outset. Let's put</p> <p>22 these aside. We'll come back to them in a</p> <p>23 little bit when we get into specific topics.</p> <p>24 Let me just ask you, what's the secretary</p> <p>25 of state's role in collecting voter data?</p>	<p style="text-align: right;">Page 13</p> <p>1 you know if that happens in New Mexico?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Did you --</p> <p>4 <b>A. It does not happen in New Mexico.</b></p> <p>5 Q. It does not happen. Okay. Now, what about --</p> <p>6 how does voting information get into the</p> <p>7 database? By that I mean whether someone casts</p> <p>8 a vote in an election.</p> <p>9 <b>A. So you're asking, to be clear, on kind of voter</b></p> <p>10 <b>credit, is that the question?</b></p> <p>11 <b>Q. It may be. Is a voter credit a record that</b></p> <p>12 <b>someone voted in a particular election?</b></p> <p>13 <b>A. Yes. So if a voter participates in an</b></p> <p>14 <b>election, we assign what's called voter credit</b></p> <p>15 <b>in New Mexico. And that assignment is</b></p> <p>16 <b>completed by a county clerk's office. And</b></p> <p>17 <b>there are system functions that support that.</b></p> <p>18 Q. What do you mean that there are system</p> <p>19 functions that support that?</p> <p>20 <b>A. So there's data that's exchanged between our</b></p> <p>21 <b>databases. It's not always a manual process of</b></p> <p>22 <b>a human making that entry.</b></p> <p>23 Q. I see. So let's just -- I don't want to go too</p> <p>24 much further, but I just want to understand the</p> <p>25 database. So do you mean that, for example,</p>

4 (Pages 10 to 13)

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1 **A. Certainly.**  
 2 Q. And that includes -- among all the other things  
 3 you just mentioned, it includes some voter data  
 4 from other states?  
 5 **A. Yes.**  
 6 Q. And New Mexico also shares its own data with  
 7 ERIC also, right?  
 8 **A. We do.**  
 9 Q. And that includes data that's in the database  
 10 that we've just been talking about, right?  
 11 **A. It does.**  
 12 Q. And I'm going to assume that ERIC does not fill  
 13 out an affidavit under the statutory process  
 14 that we're going to get to here in a minute, do  
 15 they?  
 16 **A. We have a membership agreement that we did**  
 17 **enter into with ERIC.**  
 18 Q. And there's a statute that actually allows for  
 19 that, right?  
 20 **A. Correct.**  
 21 Q. Okay. When you receive these list maintenance  
 22 reports from ERIC, do you retain them?  
 23 **A. That -- that's actually a function of our IT**  
 24 **department, so -- I know we don't maintain them**  
 25 **long-term.**

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1 Q. Can the public request the list maintenance  
 2 reports?  
 3 **A. No.**  
 4 Q. They're closed records under New Mexico law?  
 5 **A. That is a good question. I would have to**  
 6 **double check the exact language of the law.**  
 7 **But it's certainly a requirement of our**  
 8 **membership agreement.**  
 9 Q. Okay.  
 10 **A. There's MVD data that's included, and that is**  
 11 **protected under federal law as well as SSD --**  
 12 **security --**  
 13 Q. What is --  
 14 **A. We have MVD data and social security**  
 15 **information, so there are separate laws that**  
 16 **protect that data.**  
 17 Q. What's MVD data?  
 18 **A. Sorry, motor vehicle division.**  
 19 Q. From other states, right?  
 20 **A. Yes.**  
 21 Q. And yours, okay.  
 22 **By the way, this is probably a**  
 23 **fundamental question, but we should just do it**  
 24 **now. Tell us, your answers to questions here**  
 25 **suggest there's really just one database that**

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1 **has -- that all of this information feeds into,**  
 2 **is that correct?**  
 3 **A. There is one statewide voter registration**  
 4 **database.**  
 5 Q. Okay. And for any given voter, what does  
 6 the -- what fields does the database contain?  
 7 **A. There are many fields for a voter. Certainly**  
 8 **demographic information, so name, date of**  
 9 **birth, social security number, in some cases**  
 10 **driver's license. We also maintain information**  
 11 **such as a party affiliation and any activity on**  
 12 **their voter registration record.**  
 13 Q. Those would be voter credits?  
 14 **A. In part, but also any updates to the**  
 15 **information.**  
 16 Q. What do you mean updates?  
 17 **A. If somebody was married and updated their name,**  
 18 **potentially, so we did a registration update.**  
 19 Q. I see. So the very fact that there was an  
 20 update is also tracked within the database?  
 21 **A. Correct.**  
 22 Q. That's viewed as activity?  
 23 **A. Correct.**  
 24 Q. And what if they move, is that also kept as  
 25 activity?

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1 **A. Updates to their record are logged.**  
 2 Q. Now, let me ask you, when someone makes a  
 3 request for the database, which elements of  
 4 that data is released -- are released? So  
 5 we've talked about name, date of birth. Tell  
 6 me what is released when someone requests a  
 7 voter file.  
 8 **A. So if a person goes through the appropriate**  
 9 **process to request a voter file --**  
 10 Q. Uh-huh.  
 11 **A. -- and we determine that it's for an**  
 12 **appropriate use, then voter data that's**  
 13 **provided would have requested information as**  
 14 **long as it wasn't protected. So the requester**  
 15 **has an option to request history, voter**  
 16 **history, or not. And they have choices in what**  
 17 **data they'd like to obtain. So it is dependent**  
 18 **on the request.**  
 19 Q. Okay. And -- but what they can never receive  
 20 is the full date of birth, correct?  
 21 **A. Anything that is protected, that's correct.**  
 22 Q. They can receive a year of birth?  
 23 **A. Yes.**  
 24 Q. They can't receive the full social security?  
 25 **A. No portion of the social security number.**

6 (Pages 18 to 21)

<p style="text-align: right;">Page 22</p> <p>1 Q. No portion. They can receive the party 2 affiliation?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. They can receive the credit information?</p> <p>5 <b>A. They can.</b></p> <p>6 Q. And they can receive the history of updates, 7 correct or no?</p> <p>8 <b>A. No. That's just not included in a routine data 9 request.</b></p> <p>10 Q. Okay. Well, are those closed to the public?</p> <p>11 <b>A. I would actually -- I don't know that we've 12 ever received an exact request. So that is 13 something that we'd have to take a look at.</b></p> <p>14 Q. Okay. We don't need to probe much deeper.</p> <p>15 <b>A. Yeah.</b></p> <p>16 Q. But I do want to put a bookmark on this in case 17 it becomes relevant later. Nobody has -- no 18 one has ever come to you and said, "I would 19 like to just see the updates that you've made 20 to the records over the last two months"? 21 That's never come in?</p> <p>22 <b>A. If you're asking me in particular about list 23 maintenance.</b></p> <p>24 Q. Uh-huh.</p> <p>25 <b>A. Is that the question?</b></p>	<p style="text-align: right;">Page 24</p> <p>1 database," has someone made that request of 2 you?</p> <p>3 <b>A. That's something I'd certainly have to confirm. 4 As I mentioned earlier, it's not an option for 5 a voter data request.</b></p> <p>6 Q. Okay.</p> <p>7 <b>A. It would not have come through as a data 8 request.</b></p> <p>9 Q. Okay. At the very least, this is not ringing a 10 bell that this has happened any time recently, 11 correct?</p> <p>12 <b>A. Not to my knowledge.</b></p> <p>13 Q. And then who is in charge of the system, of 14 maintaining the database and then responding to 15 requests?</p> <p>16 <b>A. As far as a voter data request, you know, I'm 17 happy to repeat the process, but I think we've 18 discussed that an affidavit would have to come 19 in.</b></p> <p>20 Q. Oh, let me stop you. I'm just asking who is in 21 charge. What employee is responsible within 22 the secretary of state's office for list 23 maintenance and fulfilling requests?</p> <p>24 <b>A. So number one, the secretary of state's office 25 does not have the authority to update voter</b></p>
<p style="text-align: right;">Page 23</p> <p>1 Q. No, I -- let's just stick with my question. 2 I'm not -- maybe we can come back to list 3 maintenance, let's just stick with my question. 4 Is it clear enough or is there something vague 5 about it?</p> <p>6 <b>A. There's something vague about it, I'm sorry.</b></p> <p>7 Q. Okay. What do I need to specify to help you 8 get --</p> <p>9 <b>A. If you can repeat the question --</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. -- that will be helpful.</b></p> <p>12 Q. So let me just ask you: Has anyone ever come 13 to the secretary of state's office, let's just 14 say in the last two years, and said, "I would 15 simply like to see the activity reports" --</p> <p>16 MR. GREIM: I'm sorry, are you able to 17 hear us okay?</p> <p>18 THE COURT REPORTER: Did you say activity 19 reports?</p> <p>20 MR. GREIM: Yes.</p> <p>21 THE COURT REPORTER: Okay. We're good.</p> <p>22 BY MR. GREIM:</p> <p>23 Q. Okay. So has somebody come to you and said, "I 24 would like to see the activity reports for the 25 last three months for, you know, your entire</p>	<p style="text-align: right;">Page 25</p> <p>1 <b>registration records. So, though, we support 2 the function of list maintenance, we do not 3 update voter records directly in our office, by 4 law.</b></p> <p>5 Q. Okay. Well, let me ask you this: For the 6 functions that the secretary of state's office 7 does control, is there a particular employee 8 who is in charge of that section of the 9 secretary of state's activity?</p> <p>10 <b>A. As far as responding to a request, a general 11 request, you know, we have a team, the Bureau 12 of Elections, who is responsible for responding 13 to constituent inquiries or requests.</b></p> <p>14 Q. And you're the director of the Bureau of 15 Elections?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Is it fair to say you're the -- you're the 18 person responsible for the process for 19 fulfilling requests?</p> <p>20 <b>A. For the process, yes.</b></p> <p>21 Q. And to the extent that you have a supporting 22 role regarding list maintenance, that also 23 falls under the Bureau of Elections and falls 24 under you, correct?</p> <p>25 <b>A. It does.</b></p>

7 (Pages 22 to 25)

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1 Q. Now, let me go back to a few questions ago  
 2 before we -- we're going to move on in just a  
 3 second here.  
 4 I asked you about people requesting  
 5 updates and then you asked me about list  
 6 maintenance. So I'm going to ask you: Is it  
 7 possible to receive, from the secretary of  
 8 state, list maintenance reports? Is it  
 9 poss- -- let me rephrase that question.  
 10 Is it possible for a member of the public  
 11 to request, from the secretary of state's  
 12 office, list maintenance reports?  
 13 **A. We certainly have information in our database,**  
 14 **but as I mentioned, you know, at first like the**  
 15 **NVRA processing, list maintenance completed by**  
 16 **ERIC, those are county clerk functions.**  
 17 Q. So the secretary of state doesn't have the  
 18 data, you have to go to the county clerk to  
 19 get it?  
 20 **A. I guess it depends on exactly what data you're**  
 21 **asking me about. So that would be helpful to**  
 22 **get some clarity.**  
 23 Q. Okay. Well, what are examples of data where  
 24 you would be able to provide the answer to a  
 25 request for a list maintenance report?

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1 **A. I think we certainly have access to voter data,**  
 2 **as you are clear on. And as far as, you know,**  
 3 **efforts completed at the county, we don't have**  
 4 **a report that I could just pull. It's data**  
 5 **that we have access to, but, again, it's not**  
 6 **public facing report.**  
 7 Q. So the actual changes to the database in  
 8 response to an ERIC report happen at the county  
 9 level?  
 10 **A. Yes.**  
 11 Q. And are members of the public able to ask  
 12 county officials for records of the list  
 13 maintenance that they undertake based on ERIC  
 14 reports?  
 15 **A. ERIC data is protected, whether it's asked for**  
 16 **at the secretary of state's office or at the**  
 17 **county level.**  
 18 Q. And I'm not -- let's see if we can  
 19 differentiate between the actual ERIC data and  
 20 the record that a change was made based on ERIC  
 21 data. Do you understand the difference?  
 22 **A. Yes.**  
 23 Q. Okay. So can a member of the public ask a  
 24 county official for a record of changes that  
 25 were made due to receiving ERIC data?

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1 **A. Let me think. There is opportunities within**  
 2 **the statute to request list maintenance data.**  
 3 Q. Now, does -- if someone cites the statute and  
 4 says, "I want this maintenance data," and they  
 5 ask the secretary of state for it, does the  
 6 secretary of state have list maintenance data?  
 7 **A. What I can speak to -- you know, not this kind**  
 8 **of hypothetical that you're presenting to me,**  
 9 **but what I can certainly speak to is that our**  
 10 **office would receive any request; we would**  
 11 **review the statute; and we would make an**  
 12 **analysis on what data was public and provide**  
 13 **any data that was public.**  
 14 Q. Okay. I understand that you -- you would  
 15 always do that. But my question is very  
 16 specific. So there is a statute that says that  
 17 list maintenance data can be requested, and the  
 18 NVRA covers this as well. So my question is if  
 19 somebody comes to the secretary of state, makes  
 20 a proper request, there's an affidavit, they do  
 21 everything they're supposed to do, does the  
 22 secretary of state have list maintenance data  
 23 that it can produce in response to requests?  
 24 **A. Our office does have list maintenance data that**  
 25 **we would be able to produce if we received a**

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1 **legal request, an appropriate legal request.**  
 2 Q. Okay. And the other facts you would need to  
 3 know on a given request is whether the things  
 4 that make it a legal request. We'd have to --  
 5 we'd have to give you all those facts, about  
 6 who was requesting and what purpose they were  
 7 requesting it for and all those things, right?  
 8 **A. I think we're speaking again -- just for**  
 9 **clarity, are we speaking about a voter data**  
 10 **request submitted or a separate request under**  
 11 **NVRA or IPRA?**  
 12 Q. Well, I guess I would say this: What if the  
 13 requester doesn't know whether it's an NVRA  
 14 request or it's -- it's under your voter data  
 15 request process and just says, "I would like a  
 16 voter, you know -- I would like voter list  
 17 maintenance data." I mean, there's no magic  
 18 words required to cite the statute. I mean,  
 19 they're citing the same. And so, I mean, I  
 20 guess my question back to you is does it matter  
 21 whether they cite the NVRA or whether they cite  
 22 your state statute?  
 23 **A. I think that we would have to take any request,**  
 24 **review the content, review, you know, the**  
 25 **legal -- any statute that applies before we**

8 (Pages 26 to 29)



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1 could appropriately respond. That -- that  
 2 would be our process.  
 3 Q. Okay. We're going to spend a little more time  
 4 here before we move on. I want to understand  
 5 this. It sounds to me like in your penultimate  
 6 answer, you said, well, there are some requests  
 7 that come in for voter data under our state  
 8 law. Then there are other requests that come  
 9 in under NVRA; you're viewing those as two  
 10 separate groups. Do I understand you  
 11 correctly?  
 12 A. I don't think they're always two separate  
 13 groups, but we do receive separate requests,  
 14 yes.  
 15 Q. Okay. Okay. And you would agree that under  
 16 the NVRA, I mean, you have to provide voter  
 17 list maintenance data when someone makes a  
 18 request under the NVRA, correct?  
 19 A. I agree.  
 20 Q. And does someone making that request have to  
 21 follow the voter data request statutes under  
 22 New Mexico law and use the required affidavit  
 23 of the secretary of state's office?  
 24 A. Yes. Anytime a requester is asking us to  
 25 receive voter data, state law requires that

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1 they complete the affidavit.  
 2 Q. And voter list maintenance data is voter data,  
 3 correct?  
 4 A. Voter list maintenance is voter data, yes.  
 5 Q. Okay. Okay. Would you agree with me that  
 6 personal voter data are things like name of the  
 7 voter or the birth year for the voter, data  
 8 that specifically ties to an individual voter,  
 9 if I use the term personal voter data?  
 10 A. That term is not defined, to my knowledge.  
 11 Q. Okay.  
 12 MS. SCHREMMER: Are you asking her to  
 13 define a term for you, or are you telling her  
 14 the term you're about to use in your  
 15 questioning?  
 16 MR. GREIM: No, I was asking her.  
 17 BY MR. GREIM:  
 18 Q. So if I just said personal voter data, that  
 19 means nothing to you whatsoever? It's  
 20 completely useless as a descriptor of types of  
 21 data in the voter database?  
 22 A. Yeah.  
 23 Q. Okay. Okay. I'm going to shift gears here for  
 24 a second. One of our topics for today is just  
 25 the secretary's public statements about -- I

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1 think it -- let me just make sure I'm right  
 2 about this. Yeah. Statements that are made  
 3 either by the secretary or her agents regarding  
 4 VRF, request for or uses of voter data, or this  
 5 lawsuit.  
 6 And so let me ask you before we turn in  
 7 to this topic, what did you do to prepare for  
 8 yourself for that today?  
 9 A. I did not do anything in particular to prepare  
 10 for the item.  
 11 Q. Okay. Well, let's just charge into it. Would  
 12 you agree that any statement that gets issued  
 13 by the office is made with the approval of the  
 14 secretary of state?  
 15 A. What I can speak to is that process within the  
 16 secretary of state's office is that we  
 17 certainly -- you know, as a leadership team we  
 18 meet, we speak about current events within the  
 19 office. And we speak to any sort of messaging  
 20 that's appropriate for what's currently going  
 21 on. So certainly there's an understanding of  
 22 the correct and appropriate message, but there  
 23 is not a particular approval of each statement  
 24 made.  
 25 Q. Who's in this leadership team that meets to

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1 talk about statements?  
 2 A. I mean, it's any director within the office of  
 3 the secretary of state's office.  
 4 Q. So that's you?  
 5 A. Me.  
 6 Q. Alex Curtas?  
 7 A. Alex is our communications director.  
 8 Q. He would always be in those discussions,  
 9 correct?  
 10 A. Any time there's messaging, Alex is  
 11 participating, yes.  
 12 Q. Okay. The secretary?  
 13 A. Yes, as far as that group.  
 14 Q. Sharon Pino?  
 15 A. Yes. Dylan Lange.  
 16 Q. Who else?  
 17 A. I don't know that anyone else is relevant to  
 18 this topic, but we also have our director of  
 19 our business services, and our deputy directors  
 20 participate in those weekly leadership calls.  
 21 Q. Oh, I see. Those are phone calls?  
 22 A. Or meetings.  
 23 Q. Let me ask you: Who -- I assume that before a  
 24 statement goes out, there's a draft prepared  
 25 and people have a chance to look at it?

9 (Pages 30 to 33)



1 **A. That is true in some instances but not always.**  
 2 Q. Okay. Who usually prepares the draft of the  
 3 statement?  
 4 **A. Alex.**  
 5 Q. And then it gets -- do you communicate by  
 6 e-mail, or does he prepare a memo that gets  
 7 given around the office, you know, physically?  
 8 How does he communicate that to the team?  
 9 **A. Yeah, it depends. So it depends on what -- you**  
 10 **know, the timeline of what needs to get**  
 11 **accomplished. It depends on availability. So**  
 12 **it -- I'm happy to speak to a certain instance.**  
 13 **But generally Alex is the primary source for**  
 14 **any communication from our office. There is a**  
 15 **team that participates in kind of ensuring that**  
 16 **our messaging is correct. But Alex, at the end**  
 17 **of the day, executes those messages.**  
 18 Q. Let's go back to the Exhibit 2, because we  
 19 tried to get the answer to this question by  
 20 interrogatory. If you could go to page 10,  
 21 it's Interrogatory Number 16. I sure wish she  
 22 would have stapled these. I know, this was my  
 23 fault, I meant to say clip and then staple the  
 24 individual. Okay. So Number 16 says,  
 25 "Identify each person involved in drafting,

1 **and that we are all clear and on the same page**  
 2 **as to what that message is. And so I agree**  
 3 **that they would have knowledge of, generally,**  
 4 **our message to the public.**  
 5 Q. Okay. Now, of course, this is a really  
 6 specific interrogatory. I'm not just asking  
 7 about your process always. We were trying to  
 8 find out about statements to the media relating  
 9 to VRF or the lawsuit that were made by the  
 10 secretary or by Alex Curtas. We've got those,  
 11 okay. So I want you to limit it to that. All  
 12 right.  
 13 And so here is my question: I mean, do  
 14 you agree with the statement that's typed up as  
 15 the response here, or would you change it?  
 16 **A. I think it would be helpful is to understand,**  
 17 **you know, the exact message that we're speaking**  
 18 **about. I agree that Alex would have drafted.**  
 19 **I agree that there would have been**  
 20 **conversations supporting the message and**  
 21 **clarity as to our position on this lawsuit and**  
 22 **our public messaging. As far as each**  
 23 **individual, you know, statement, it would be**  
 24 **important to understand what statement I'm**  
 25 **answering to.**

1 revising, approving, and sending each public  
 2 statement or statement to a member of the media  
 3 relating to VRF or relating to the lawsuit that  
 4 was made by (i) the secretary, and (ii) Alex  
 5 Curtas." That's the request.  
 6 Then the response, "Subject to, and  
 7 without waiving objections, the secretary  
 8 states Alex Curtas, the communications  
 9 director, drafted public statements or  
 10 statements to a member of the media relating to  
 11 VRF or this lawsuit, which would have been  
 12 approved by Sharon Pino or the secretary.  
 13 Ultimately, the secretary makes the final  
 14 decision with respect to what information is  
 15 provided in a public statement."  
 16 Did I read that correctly?  
 17 **A. Let me just read it again.**  
 18 **Q. Sure. My question is going to be whether you**  
 19 **agree with that response.**  
 20 **A. To be clear, my answer to your question is that**  
 21 **we do have a process and we do participate as a**  
 22 **leadership team. And I agree that the**  
 23 **secretary or the deputy secretary of state will**  
 24 **always be involved in messaging; meaning that**  
 25 **we are providing the appropriate public message**

1 Q. I see. So you -- so the very last sentence is  
 2 the one that's most important to me and that  
 3 could save us some time if it were true. It  
 4 says, "Ultimately, the secretary makes the  
 5 final decision with respect to what information  
 6 is provided in a public statement." Is that  
 7 true?  
 8 **A. And I think it's, to be clear, as far as the**  
 9 **statement, the message, the response, that is**  
 10 **true. As far as the exact words in a media**  
 11 **release, it would be something that we'd have**  
 12 **to look at each individual request. I agree**  
 13 **that she would certainly participate in the**  
 14 **decision about the public message and that Alex**  
 15 **would have drafted it. Ultimately, yes, she**  
 16 **has an understanding and would approve our**  
 17 **public message. I am not speaking to each**  
 18 **individual statement and each word in that**  
 19 **statement.**  
 20 Q. Okay. Well, what about with respect to what  
 21 information is provided in a public statement,  
 22 do you agree that the secretary makes the final  
 23 decision on what information is provided in a  
 24 public statement?  
 25 **A. And when you say "information," can you**

<p style="text-align: right;">Page 50</p> <p>1 on. I didn't hear, I missed a part of it. And</p> <p>2 the fact that voters would be intimidated and</p> <p>3 cause them to what? To want to --</p> <p>4 THE WITNESS: To de-register and not</p> <p>5 participate in our process. That is a fact</p> <p>6 that our office was contacted by voters with</p> <p>7 those exact concerns and requests.</p> <p>8 MR. GREIM: I move to strike that answer</p> <p>9 as non-responsive.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. Okay. Let's just move on to some other topics</p> <p>12 here. Well, let me ask you this: I may --</p> <p>13 <b>A. May I ask for a restroom break?</b></p> <p>14 MR. GREIM: Yeah, why don't we. We've</p> <p>15 been going for a little while.</p> <p>16 Okay. We're going to go off the record</p> <p>17 for five to ten minutes and come back and keep</p> <p>18 charging ahead.</p> <p>19 (WHEREUPON, at this time a brief recess</p> <p>20 was taken.)</p> <p>21 MR. GREIM: Before we begin -- resume</p> <p>22 questioning of the witness, we just have a</p> <p>23 stipulation to enter onto the record. And why</p> <p>24 don't you -- since you're the stipulator, why</p> <p>25 don't you say it.</p>	<p style="text-align: right;">Page 52</p> <p>1 THE COURT REPORTER: Posting of what?</p> <p>2 Q. Okay. And who --</p> <p>3 THE WITNESS: I'm sorry, posting online.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Okay. And this was signed by Sharon Pino,</p> <p>6 correct?</p> <p>7 <b>A. It is.</b></p> <p>8 Q. And you were present when I questioned Ms. Pino</p> <p>9 some months ago about this referral, do you</p> <p>10 recall that?</p> <p>11 <b>A. I was present?</b></p> <p>12 Q. Well, actually, maybe you weren't, because it</p> <p>13 was on my -- you may not have been around for</p> <p>14 that. Okay, we'll strike that.</p> <p>15 Now, we have asked the secretary of state</p> <p>16 who participated in the decision to make this</p> <p>17 referral. Okay, so keep your finger on</p> <p>18 Exhibit 4, but go back please to Exhibit 2, the</p> <p>19 interrogatory responses. And turn to page 8,</p> <p>20 please. We're going to go between pages 8 and</p> <p>21 9.</p> <p>22 <b>A. Okay.</b></p> <p>23 Q. And we asked the secretary to identify each</p> <p>24 person who participated in the decision to make</p> <p>25 a criminal referral of VRF, and the person, if</p>
<p style="text-align: right;">Page 51</p> <p>1 MS. LECOCQ: Sure. The State is</p> <p>2 stipulating -- well, I'll just let you do it.</p> <p>3 MS. SCHREMMER: In Exhibit 3, and it's</p> <p>4 physical page 4, there is a quote attributed to</p> <p>5 Toulouse Oliver that begins, "This is an</p> <p>6 overtly political purpose." And we're</p> <p>7 stipulating that we do not have any reason to</p> <p>8 believe this is a misquote.</p> <p>9 MR. GREIM: Okay. Thank you very much.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. Okay. We're going to shift gears now and we're</p> <p>12 going to talk a little bit about the criminal</p> <p>13 referral. So what are we on now, 4?</p> <p>14 <b>A. Yes.</b></p> <p>15 (WHEREUPON, Deposition Exhibit 4 was</p> <p>16 marked for identification.)</p> <p>17 BY MR. GREIM:</p> <p>18 Q. I'm going to hand you what we're marking as</p> <p>19 Exhibit 4. And I'm going to ask you if you</p> <p>20 recognize this document.</p> <p>21 <b>A. I do.</b></p> <p>22 Q. What is it?</p> <p>23 <b>A. This is the referral that our office made to</b></p> <p>24 <b>the attorney general's office related to Voter</b></p> <p>25 <b>Reference Foundation's posting of the data.</b></p>	<p style="text-align: right;">Page 53</p> <p>1 any, who made the final decision. And then we</p> <p>2 asked certain things about each one of those.</p> <p>3 So that's the question. And then if you turn</p> <p>4 to page 9, you'll see there's an objection that</p> <p>5 it's privilege, and then there's a little</p> <p>6 paragraph at the end that says "Without</p> <p>7 waiving, and subject to those objections, the</p> <p>8 secretary states that Sharon Pino, deputy</p> <p>9 secretary of state, made the decision to make</p> <p>10 the criminal referral, which was reviewed and</p> <p>11 approved by the secretary."</p> <p>12 Now, is that a true statement?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Okay. My question is: Who else was involved</p> <p>15 in the decision?</p> <p>16 MS. LECOCQ: Objection to the extent that</p> <p>17 any of this involved discussion with counsel,</p> <p>18 with Mr. Lange.</p> <p>19 BY MR. GREIM:</p> <p>20 Q. Well, my -- okay, left's start with Mr. Lange.</p> <p>21 Let's get this out of the way. Was Mr. Lange</p> <p>22 involved in the decision?</p> <p>23 MS. LECOCQ: Objection. You can go ahead</p> <p>24 and answer.</p> <p>25 <b>A. Okay. Yes.</b></p>

14 (Pages 50 to 53)

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1 BY MR. GREIM:  
 2 Q. Okay. Let's put him to one side. Who else was  
 3 involved in the decision?  
 4 **A. Myself.**  
 5 Q. Okay. Who else?  
 6 **A. And the Deputy Secretary of State Sharon Pino.**  
 7 Q. Okay. And who else?  
 8 **A. And the secretary certainly had received a**  
 9 **recommendation and did approve.**  
 10 Q. Okay. Who else? Alex Curtas?  
 11 **A. Not in the decision, no.**  
 12 Q. Okay. So how was the decision made? I'm not  
 13 going to ask you for substance. I just want to  
 14 know was there an e-mail exchange or one or  
 15 more e-mail exchanges or text exchanges, or did  
 16 it happen in a meeting?  
 17 **A. It happened in a meeting.**  
 18 Q. Okay. And when was that meeting?  
 19 **A. I don't have the exact date. It was certainly**  
 20 **prior to December 20th of 2021. And it was**  
 21 **upon us being made aware that this data, that's**  
 22 **when we initiated conversation, once we were**  
 23 **aware.**  
 24 Q. Okay. Did you receive a complaint?  
 25 **A. We did not receive a formal complaint. We did**

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1 both VoteRef.com and Local Labs have violated  
 2 the prohibition against 'providing' voter data  
 3 by posting New Mexican's private voting  
 4 information online, or in Local Labs' case,  
 5 providing the voter data to VoteRef.com."  
 6 Is that a true statement?  
 7 **A. Yes.**  
 8 Q. And then it says, "We also believe that  
 9 VoteRef.com and Local Labs have 'illegally'  
 10 used this voter data by publishing it on  
 11 VoteRef.com."  
 12 Is that a true statement?  
 13 **A. Yes.**  
 14 Q. All right. Did you recall there being any  
 15 false statement in Ms. Pino's referral to the  
 16 secret- -- to the attorney general?  
 17 **A. No.**  
 18 Q. Before the referral occurred, and set aside  
 19 Mr. Lange, were there any dissenting voices  
 20 between Ms. Pino, yourself, and the secretary  
 21 of state on whether this referral should be  
 22 sent out?  
 23 **A. No.**  
 24 Q. Were there any drafts prepared of this  
 25 referral?

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1 **receive an inquiry from the media.**  
 2 Q. From ProPublica, correct?  
 3 **A. From ProPublica.**  
 4 Q. ProPublica did not make a complaint against  
 5 VRF, did it?  
 6 **A. No.**  
 7 Q. Okay. Let's turn to Exhibit 4. I just want to  
 8 ask very generally here -- let's go to the  
 9 conclusion. By the way, I assume you reviewed  
 10 this document in preparation for your testimony  
 11 today?  
 12 **A. I have not recently reviewed this document.**  
 13 Q. Okay. And it sounds like you did not speak  
 14 with Ms. Pino in preparation for your testimony  
 15 today?  
 16 **A. I did not.**  
 17 Q. Well, let's look at the very first line of the  
 18 conclusion. "Our office believes the transfer  
 19 and publication of this voter data is in direct  
 20 violation of the Election Code."  
 21 Did I read that correctly?  
 22 **A. You did.**  
 23 Q. Is that a true statement?  
 24 **A. Yes.**  
 25 Q. And then the next sentence, "We believe that

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1 **A. Yes.**  
 2 Q. Okay. Who prepared the drafts?  
 3 **A. I believe our general counsel did.**  
 4 Q. Okay. And is he the one who actually drafted  
 5 this letter and Ms. Pino signed it?  
 6 MS. LECOCQ: Objection.  
 7 **A. I believe our general counsel prepared this and**  
 8 **it was reviewed and the final version was**  
 9 **signed by Ms. Pino.**  
 10 BY MR. GREIM:  
 11 Q. Okay. Who -- did certain people suggest edits  
 12 to this?  
 13 **A. Anyone that was part of the decision making, so**  
 14 **myself, Ms. Pino, general counsel, would have**  
 15 **reviewed and suggested any edits.**  
 16 Q. What edits, if any, did you suggest?  
 17 **A. I don't recall suggesting any edits.**  
 18 Q. What edits did Ms. Pino suggest?  
 19 **A. I don't recall if there were any specific**  
 20 **edits --**  
 21 Q. And what -- okay.  
 22 **A. -- throughout the process.**  
 23 Q. Okay. Well, it went through several drafts,  
 24 correct?  
 25 **A. I don't know if there were several drafts. I**

15 (Pages 54 to 57)

<p style="text-align: right;">Page 62</p> <p>1 receipt.</p> <p>2 Q. Okay. So did the attorney general ever provide</p> <p>3 any updates on, you know, what he was or wasn't</p> <p>4 doing with the referral?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 <b>A. No, I do not have any status update on any sort</b></p> <p>7 <b>of action taken on the criminal referral.</b></p> <p>8 BY MR. GREIM:</p> <p>9 Q. Okay. Now, I'm not just asking about you; I'm</p> <p>10 asking about the office. Did the attorney</p> <p>11 general give any status reports to Ms. Pino or</p> <p>12 to the secretary or even Mr. Lange about what</p> <p>13 was going on with the investigation?</p> <p>14 MS. LECOCQ: Objection, and especially</p> <p>15 with respect to Mr. Lange.</p> <p>16 <b>A. So I am not aware that the office has</b></p> <p>17 <b>received -- there is no status updates from the</b></p> <p>18 <b>attorney general's office on this criminal</b></p> <p>19 <b>matter at this time.</b></p> <p>20 BY MR. GREIM:</p> <p>21 Q. Okay. At this time, my question is whether</p> <p>22 there has ever been written or oral updates</p> <p>23 provided by the AG's office to the secretary of</p> <p>24 state's office regarding this referral?</p> <p>25 MS. LECOCQ: Objection.</p>	<p style="text-align: right;">Page 64</p> <p>1 state's office on any action being taken on</p> <p>2 this criminal referral by the attorney</p> <p>3 general's office.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Okay. And how do you know that to be true?</p> <p>6 <b>A. Because I would have been made aware.</b></p> <p>7 Q. Did you ask Ms. Pino before today whether she</p> <p>8 had received any -- any commun- -- let's put</p> <p>9 aside the term status update for second. Okay.</p> <p>10 Let's just say any communication at all from</p> <p>11 the attorney general's office. Let me rephrase</p> <p>12 this to make it clear for the record.</p> <p>13 Has there been any communication at all</p> <p>14 from the attorney general's office to the</p> <p>15 secretary of state's office about this</p> <p>16 investigation since December 20, 2021?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 <b>A. So the only thing that I can speak to is that I</b></p> <p>19 <b>have asked Ms. Pino and Dylan Lange if the</b></p> <p>20 <b>attorney general's office has taken any action</b></p> <p>21 <b>on this matter and the response has been no.</b></p> <p>22 BY MR. GREIM:</p> <p>23 Q. Okay. And when did you last ask Ms. Pino that</p> <p>24 question?</p> <p>25 <b>A. It's been several months.</b></p>
<p style="text-align: right;">Page 63</p> <p>1 <b>A. At this point in time, the office is not aware</b></p> <p>2 <b>of any action taken by the AG's office on this</b></p> <p>3 <b>matter and no status updates received on this</b></p> <p>4 <b>criminal matter at this time.</b></p> <p>5 BY MR. GREIM:</p> <p>6 Q. Okay. I'm not going to ask you any more about</p> <p>7 it at this time. My question is now, at any</p> <p>8 time, this referral was made in December of</p> <p>9 2021, right, so about 14 months ago.</p> <p>10 <b>A. Okay.</b></p> <p>11 Q. So your testimony is that the attorney general</p> <p>12 never orally or in writing ever communicated</p> <p>13 again with the secretary of state about this</p> <p>14 referral?</p> <p>15 <b>A. No.</b></p> <p>16 Q. And did you -- did you do any investigation to</p> <p>17 see whether that was true before today?</p> <p>18 <b>A. Whether what was true?</b></p> <p>19 Q. Whether it's true that the attorney general has</p> <p>20 never mentioned this investigation again to the</p> <p>21 secretary of state's office after this</p> <p>22 December 20th referral?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 <b>A. What I can speak to is that there has been no</b></p> <p>25 <b>status updates provided to the secretary of</b></p>	<p style="text-align: right;">Page 65</p> <p>1 Q. When did you last ask Mr. Lange that question?</p> <p>2 MS. LECOCQ: Objection. Actually don't</p> <p>3 answer that.</p> <p>4 MR. GREIM: Well, it's not a request for</p> <p>5 legal advice. It's just a request about</p> <p>6 whether there has been communication or not.</p> <p>7 MS. LECOCQ: Okay.</p> <p>8 <b>A. Yes. More recently, I would say probably</b></p> <p>9 <b>within the last month.</b></p> <p>10 BY MR. GREIM:</p> <p>11 Q. But since the new year?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And I don't want you to give me any legal</p> <p>14 advice that Mr. Lange told you, but I need to</p> <p>15 know, did Mr. Lange tell you whether he had</p> <p>16 heard anything from the attorney general about</p> <p>17 the investigation?</p> <p>18 MS. LECOCQ: Go ahead.</p> <p>19 <b>A. Mr. Lange has -- to my knowledge, has not heard</b></p> <p>20 <b>anything from the attorney general's office</b></p> <p>21 <b>about this investigation.</b></p> <p>22 BY MR. GREIM:</p> <p>23 <b>Q. Okay. Does the secretary of state's office</b></p> <p>24 <b>know if the investigation is continuing?</b></p> <p>25 <b>A. Our understanding is that it's still pending.</b></p>

17 (Pages 62 to 65)

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1 BY MR. GREIM:  
 2 Q. But you didn't ask him whether he was providing  
 3 any other information to the AG's office?  
 4 **A. I didn't.**  
 5 Q. Before we move along, you said in the past  
 6 month. Maybe we can drill down a little bit  
 7 more. Was it in the month of February?  
 8 **A. Do you have a calendar? I think it was**  
 9 **certainly in the month of January or February.**  
 10 Q. Was it in the last two weeks?  
 11 **A. No.**  
 12 Q. It could have been in early February, but it  
 13 also may have been in January?  
 14 **A. I'm just trying to remember an exact date. I**  
 15 **feel confident in saying that it was the past**  
 16 **three weeks.**  
 17 Q. Okay. So let me ask you this: What  
 18 information has the secretary of state  
 19 gathered -- and I guess we can't know whether  
 20 it's been passed on to the attorney general or  
 21 not. That would be information Mr. Lange has.  
 22 So I understand that. But what information has  
 23 the office gathered it has at least considered  
 24 passing on to the attorney general's office?  
 25 **A. Our office has not gathered anything specific**

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1 **to a criminal investigation. Anything that we**  
 2 **have -- you know, our concern was data posted**  
 3 **on the website, that was the focus. And so**  
 4 **there would only be updates provided to our**  
 5 **attorneys on this case related to the status of**  
 6 **that data.**  
 7 Q. Okay. Whether it was up or down?  
 8 **A. Correct.**  
 9 Q. And separately, I'm going to draw the line so  
 10 that we don't invade privilege here, at least  
 11 until I think about this some more, it sounds  
 12 like there was some other information of some  
 13 type given to Mr. Lange for him to decide  
 14 whether he wanted to give it out to the AG's  
 15 office?  
 16 MS. LECOCQ: Objection.  
 17 **A. No, I never said that.**  
 18 BY MR. GREIM:  
 19 Q. No? Okay. Then I misunderstood. I understood  
 20 that Mr. Lange would have been the person to  
 21 give it on if there were something to give on?  
 22 **A. Sure.**  
 23 Q. Right? We don't know whether he has done so or  
 24 not, correct?  
 25 **A. Correct.**

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1 Q. And so I guess my question is: Was there any  
 2 information that you -- that the office has  
 3 given to Mr. Lange so that he can make the  
 4 decision about whether to pass it on or not?  
 5 **A. The only thing that I am responding to is the**  
 6 **fact that our concern was about the data being**  
 7 **posted or taken down from the Internet. And so**  
 8 **that would be the only update that would have**  
 9 **been provided to our attorneys in this case.**  
 10 Q. Okay.  
 11 **A. And if Dylan so chose, that he felt like that**  
 12 **was relevant to the criminal referral, he may**  
 13 **have provided an update. There is no**  
 14 **additional investigation that our office is**  
 15 **undergoing; that is for the attorney general's**  
 16 **office.**  
 17 Q. Okay, very good. Now, there has been a  
 18 reference to contact with voters -- or not with  
 19 voters, with members of the general public who  
 20 have contacted the secretary of state's office  
 21 about their concerns with VRF. You mentioned  
 22 that already. And I just want to be clear. I  
 23 mean, can we be certain that everything has  
 24 been turned over in discovery at this point,  
 25 everything that the office has received?

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1 **A. Yes.**  
 2 Q. Okay. That saves us a bunch of time.  
 3 I now want to talk a little bit more  
 4 about the secretary of state's position here.  
 5 THE COURT REPORTER: I'm sorry, say that  
 6 again. I didn't hear your full question.  
 7 BY MR. GREIM:  
 8 Q. Sure. I now want to talk more now about the  
 9 secretary of state's position.  
 10 THE COURT REPORTER: Oh, thank you.  
 11 MR. GREIM: Sorry. I know I'm  
 12 shuffling -- there are some papers really close  
 13 to the microphone. I'm going to try to do  
 14 better.  
 15 THE COURT REPORTER: That's okay.  
 16 **A. Mr. Greim, just on your last question you asked**  
 17 **me in particular about the list or the**  
 18 **information from voters, and you asked if we**  
 19 **had turned that all over, correct, that was the**  
 20 **question?**  
 21 BY MR. GREIM:  
 22 Q. Well, my question is: Is there any other  
 23 information that you've received about  
 24 complaints? And we've received the list. I  
 25 just want to know if there's a list update that

19 (Pages 70 to 73)



Page 74

1 we haven't gotten yet.

2 **A. Okay, that's correct. We haven't -- you've**

3 **received any -- the information you've received**

4 **is current.**

5 Q. Okay. Let me ask you -- let's go to

6 Interrogatory Number 13. And we're on back to

7 Exhibit 2, it's on page 7.

8 **A. Okay.**

9 **Q. And the question is, "State whether you contend**

10 **that VRF's use of New Mexico data failed to**

11 **qualify as either a governmental or**

12 **election-related or campaign use under New**

13 **Mexico law, and if so, explain how and why**

14 **VRF's use did not qualify for each applicable**

15 **category."**

16 Do you see that?

17 **A. Uh-huh.**

18 Q. And there's an objection. And then there's

19 response subject to the objection. And I'm

20 going to start reading from that line, it says,

21 "The secretary does contend that VRF's public

22 posting of New Mexico data on the Internet

23 failed to qualify as a permissible use under

24 New Mexico law because it was not for a

25 governmental, election, or campaign purpose

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1 within the plain meaning of applicable laws."

2 Did I read that correctly?

3 **A. You did.**

4 Q. Okay. And is that a correct statement?

5 **A. Yes. The office believes that VRF's public**

6 **posting of the data is not a permissible use.**

7 Q. Now, you might recall we went -- we explored

8 this topic in some detail at the preliminary

9 injunction hearing. So I want to understand a

10 little bit more about why the public posting is

11 not a permissible use. Okay, so let me start

12 with governmental. That's one of three uses,

13 right?

14 **A. Right.**

15 Q. So why is the public -- why is VRF's public

16 posting of New Mexico data not a permissible

17 governmental use?

18 **A. Again, I feel like this is something that would**

19 **have been analyzed and discussed with our**

20 **attorneys in particular on how to apply the law**

21 **appropriately.**

22 **Q. I'm not asking for communications with counsel.**

23 **I'd like to know the secretary of state's**

24 **position. Why did it fail to qualify as a**

25 **governmental use?**

Page 76

1 **A. I think because it's not a government entity**

2 **utilizing the data. They're not using it for a**

3 **governmental purpose.**

4 Q. Okay. So the secretary's position is that

5 because VRF is not a governmental entity, its

6 use is not a governmental use?

7 **A. I don't think that's the only thing I said. I**

8 **said they're also not using it for a**

9 **governmental purpose.**

10 Q. Okay. And so let's talk about for a second

11 what they're using it for so that we're on the

12 same page. You understand that -- and we went

13 through this before so we're going to have to

14 kind of warm up and refresh our memory. Do you

15 recall VRF saying it was going to analyze the

16 data and determine if there were discrepancies

17 between basically the credits that show on

18 the -- on the snapshot of the list that it got

19 and then compare that against the ballots cast

20 in the 2020 election and then try to explain

21 why there was a difference between those two?

22 Do you remember VRF's assertion and testimony

23 about that basic idea?

24 **A. I recall that basic idea that there was an**

25 **intention to utilize voter data received from**

Page 77

1 **our office at a point in time.**

2 Q. Uh-huh.

3 **A. And also analyze that based on information on**

4 **ballots cast, correct.**

5 Q. And let's just stick with that for a second. I

6 will tell you -- well, let me just -- I'll just

7 ask the question. Is it the secretary's

8 position that that's not a governmental use,

9 analyzing the data for that purpose?

10 **A. I think that would certainly be something that**

11 **would be reviewed by our attorney.**

12 Q. Maybe. But my question is the secretary's

13 position.

14 **A. I think that the public posting of the data on**

15 **the website is what I can speak to as not being**

16 **something that was prepared under state law.**

17 Q. Okay. So in other words, the secretary is not

18 taking a position that this first project I

19 just talked about is not a governmental use.

20 When you say it's not a governmental use,

21 you're really talking about the public posting

22 of the data, correct?

23 MS. LECOCQ: Objection.

24 **A. I think that your specific question is not**

25 **something that we specifically analyzed at this**

20 (Pages 74 to 77)

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1 point in time. So I think the public posting  
 2 is the piece that I can speak to related to  
 3 that question.  
 4 BY MR. GREIM:  
 5 Q. Okay. Well, let's just -- let's keep it to  
 6 that. Let's just keep it to that. So is it  
 7 the secretary's position that publicly posting  
 8 the data and asking voters to review it and  
 9 report any inconsistencies or perceived errors  
 10 to the secretary of state is not a governmental  
 11 use?  
 12 MS. LECOCQ: Objection.  
 13 A. Again, it's the public posting piece that has  
 14 been analyzed, not some of these other  
 15 hypotheticals scenarios that you're describing.  
 16 That is different.  
 17 BY MR. GREIM:  
 18 Q. Okay.  
 19 A. And it would need some review.  
 20 Q. Well, let's -- let's maybe make it as simple as  
 21 we can. It sounds to me like the secretary's  
 22 position -- and just tell me if I -- if you  
 23 disagree. It sounds to me like the secretary's  
 24 position is that as soon as you have publicly  
 25 posted the data on the Internet, that cannot be

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1 a governmental use regardless of what you tell  
 2 the public about why you're doing it.  
 3 MS. LECOCQ: Objection.  
 4 BY MR. GREIM:  
 5 Q. Is that true?  
 6 A. I disagree. So I think what I can speak to are  
 7 the facts of what Voter Reference Foundation  
 8 did in this circumstance, that's what's been  
 9 evaluated and reviewed, and that's the public  
 10 posting that I can speak about.  
 11 Q. Okay. So, you know what, that is the easiest  
 12 way to do it. So before the criminal referral  
 13 was made, I take it the secretary of state's  
 14 office got on and looked at the VRF website,  
 15 right?  
 16 A. Yes.  
 17 Q. Okay. And based on what it found on the VRF  
 18 website, it decided this is not a governmental  
 19 use, correct?  
 20 A. It's not a permissible use.  
 21 Q. Okay. And we're on governmental right now. So  
 22 they decided -- we'll get to the other ones.  
 23 They decided this is not a governmental use,  
 24 correct?  
 25 A. The analysis was really just based on a

Page 80

1 permissible use. I do not have a recollection  
 2 of a specific analysis related to each item.  
 3 Q. Okay.  
 4 A. It was determined that holistically it was not  
 5 permissible under state law.  
 6 Q. Okay. But let's just -- let's talk about --  
 7 the permissible uses are defined under state  
 8 law, right?  
 9 A. Uh-huh.  
 10 Q. And what are they?  
 11 A. I have them here, and I don't have the statute  
 12 in front of me, but this came from our  
 13 attorneys, so I'm going to trust that it --  
 14 governmental election or campaign purpose.  
 15 Q. Right. I don't want to -- I'm not going to  
 16 make this an exhibit, but I just don't want to  
 17 have any lack of clarity here. I thought I had  
 18 it. Here we go. I'm just going to give you a  
 19 copy -- I'm going to give you the copy of the  
 20 statute here. We're not going to mark it, but  
 21 I'm giving you 1-4-5.5. Here we go. The list  
 22 of uses is under C, correct?  
 23 A. Yes.  
 24 Q. Okay. And so 1-4-5.5 C lists the permissible  
 25 uses under the statute, right?

Page 81

1 A. Yes.  
 2 Q. Okay. And then those are further defined down  
 3 in subsection E?  
 4 A. Correct.  
 5 Q. And maybe we can't go much further than this,  
 6 but I do want to tie this together. I mean,  
 7 the secretary of state's position is that VRF's  
 8 posting on its website, the actual posting it  
 9 did, after it reviewed the website, was not a  
 10 governmental use, correct?  
 11 A. Again, the secretary of state's office, in  
 12 reviewing the statute, not only this section,  
 13 made a decision that the public posting of the  
 14 voter data was not a permissible use of that  
 15 data.  
 16 Q. Okay. And when you say "not a permissible  
 17 use," you mean not a governmental use or  
 18 election use or election campaign purposes use,  
 19 correct?  
 20 A. In part. And it also ties back to the fact  
 21 that it was not appropriately received from our  
 22 office and it was being publicly distributed,  
 23 and we feel like that was a violation.  
 24 Q. And I'm not asking about all the different --  
 25 I'm just trying to focus, okay, I'm trying to

21 (Pages 78 to 81)



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1 focus on the lack of permissible use. We just  
 2 found where the permissible uses are. And, I  
 3 mean, I just hope we're clear. I -- that the  
 4 secretary's position is that VRF's use by  
 5 posting on the Internet is not any of those  
 6 uses, correct?

7 **A. You asked me about our decision. You asked me**  
 8 **about, you know, what -- why did the secretary**  
 9 **of state make this decision and what is our**  
 10 **position. And that's what I'm responding to.**  
 11 **So it is our position that the public posting**  
 12 **of the data is not permissible under state law.**

13 Q. Well, but hold on now, okay? We saw the actual  
 14 statement. The actual statement says it's not  
 15 a permissible use, okay? And so we know that  
 16 there are either two or three permissible uses,  
 17 depending on how you read that section, right?  
 18 Governmental is one of them, right?

19 **A. Uh-huh.**

20 Q. And if it's not governmental, what's the other  
 21 use have to be?

22 **A. Election campaign purpose.**

23 Q. Okay. And so if it's a permissible use, it's  
 24 got to be one or the other, right?

25 **A. And I think there's also parameters around how**

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1 **that can be utilized. And public posting**  
 2 **online is not one of them.**

3 Q. Okay. But let's just -- let's just stick with  
 4 the analysis. If it's a permissible use, it's  
 5 got to be one or the other, governmental or  
 6 election campaign purposes, right?

7 **A. Correct.**

8 Q. And VRF's posting on the Internet that you  
 9 observed, your -- the secretary's opinion is  
 10 it's not governmental and it's not election  
 11 campaign purposes, correct?

12 **A. I feel like it was a broader analysis based on**  
 13 **the public posting and that it was not obtained**  
 14 **appropriately and that it was being publicly**  
 15 **distributed. So, you know, you continue to ask**  
 16 **that question. I understand. And my answer is**  
 17 **what I've shared, that our analysis was broader**  
 18 **than those two elements.**

19 Q. Well, I'm going to ask -- and this is getting  
 20 interesting. Okay. I'm going to have to probe  
 21 a little further now.

22 So is the secretary's position that if it  
 23 were -- if it -- VRF had obtained them directly  
 24 from the secretary of state's office, that  
 25 their posting on the Internet would be for

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1 governmental or election campaign focuses?  
 2 MS. LECOCQ: Objection.

3 **A. What I can answer is that that -- number one,**  
 4 **that's not what occurred.**

5 BY MR. GREIM:

6 Q. I understand. I'm trying to understand the  
 7 conduct that you contend is sufficient to  
 8 violate this statute.

9 **A. The requester that follows the appropriate**  
 10 **process, the lawful process, that would**  
 11 **publicly post that data on the Internet, that**  
 12 **would be a violation under state law.**

13 Q. We'll just leave it. That's fine. By the way,  
 14 before -- I don't want to move too far.  
 15 Interrogatory Number 13, let's come back to it.  
 16 The top of the page, this is actually page 8,  
 17 the paragraph that continues and ends on the  
 18 very top of the page. The very last sentence  
 19 there says "Investigation by the attorney  
 20 general is ongoing and has not yet resulted in  
 21 any criminal action against VRF."  
 22 Did I read that correctly?

23 **A. You did.**

24 Q. Is that true?

25 **A. Yes. I don't feel like that's any different**

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1 **than what I shared before and that we have no**  
 2 **knowledge that the case has been closed. We**  
 3 **also don't have any knowledge that there's been**  
 4 **any action, again, by the attorney general**  
 5 **office on that investigation.**

6 Q. You're not backing away from the statement we  
 7 just read, are you?

8 **A. I'm not.**

9 Q. Okay.

10 **A. I'm simply saying it's aligned with what I said**  
 11 **before.**

12 Q. Let me ask you a little bit more about the  
 13 posting issue on the Internet. Okay, we're not  
 14 going to focus so much now on governmental  
 15 election or election campaign.

16 I want to show you a response that we  
 17 received from your attorneys clarifying some of  
 18 your prior interrogatory responses. I think  
 19 this is Exhibit --

20 **A. 5.**

21 Q. -- 5.

22 (WHEREUPON, Deposition Exhibit 5 was  
 23 marked for identification.)

24 BY MR. GREIM:

25 Q. I'm going to show you an e-mail dated just last

22 (Pages 82 to 85)

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1 Tuesday, February 21, from Erin Lacocq to me  
 2 copying some other attorneys. And there are  
 3 some questions that I've posed about some of  
 4 the other answers. And let me -- let me go to  
 5 the very bottom of the page. Let's see here.  
 6 Okay. Actually, let's go to the very first --  
 7 you see there's some bolding in the very middle  
 8 of the page? And I'm asking a question of  
 9 counsel. You'll see there's an answer in bold.  
 10 It says, "Both the AG and the SOS believe that  
 11 'sharing data' outside one's organization, or  
 12 publishing that data to make it available for  
 13 the general public, constitutes a violation of  
 14 New Mexico law. This is not just the act of  
 15 sharing data, but rather disseminating that  
 16 information to the general public."

17 Did I read that correctly?

18 **A. You read that bold section correctly.**

19 Q. Okay. And so I guess my simple question is:  
 20 Is this the position of the secretary of  
 21 state's office?

22 **A. Can I have a moment just to --**

23 Q. You can. I will tell you, we've printed off  
 24 the entire e-mail chain. It also has lots of  
 25 discussion about other things, unfortunately.

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1 So the only -- the e-mail that we actually care  
 2 about is just on pages 1 and 2. And it's got  
 3 other questions that don't really relate to  
 4 what we're doing here today.

5 MS. LECOCQ: I object to the extent that  
 6 we're getting into legal contentions rather  
 7 than the position of the office. But other  
 8 than that, go ahead.

9 **A. (Witness reviewing document.) Okay.**

10 BY MR. GREIM:

11 Q. My very first question is: Is what's in bold,  
 12 the very first bolded answer on this page, the  
 13 position of the secretary of state's office?

14 **A. Yes.**

15 Q. Okay. And I now -- I want to explore the idea  
 16 of sharing the data with the general public  
 17 online. I mean, we talked -- I asked you  
 18 questions before in another proceeding where I  
 19 asked about sharing data outside of an  
 20 organization. Do you remember that?

21 **A. Yes.**

22 Q. We talked at some length. I'm going to put  
 23 that aside. We're going to focus on the  
 24 Internet, okay? And so my question is: What  
 25 is it about having data available on the

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1 Internet to the general public that makes the  
 2 conduct unlawful in the view of the secretary  
 3 of state?

4 MS. LECOCQ: I'm going to go ahead and  
 5 just do a standing objection for legal  
 6 contentions.

7 MR. GREIM: Noted.

8 **A. I remember our past conversation as well, and**  
 9 **I, again, today would share that the position**  
 10 **of the office is that sharing within an**  
 11 **organization is different than sharing outside**  
 12 **of that organization, and so that applies to**  
 13 **the Internet. You are obviously sharing**  
 14 **outside of the organization if it's publicly**  
 15 **posted online.**

16 BY MR. GREIM:

17 Q. Okay. And I want to understand -- well, let me  
 18 ask you this: What if an entity contracts with  
 19 individuals to review voter data it has  
 20 requested, in the secretary of state's view, is  
 21 that sharing the data outside of your  
 22 organization?

23 **A. I'm just going to make sure I understand your**  
 24 **question.**

25 Q. Sure.

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1 **A. So you're describing a scenario in which there**  
 2 **is an entity that has lawfully obtained the**  
 3 **voter data.**

4 Q. Correct.

5 **A. And they have agents within their organization**  
 6 **that they are sharing the data with, that --**  
 7 **that are contained in that organization."**

8 Q. No. They've lawfully obtained the data, then  
 9 they go and they hire very smart data analysts  
 10 and they execute contracts with these data  
 11 analysts, independent contractor agreements,  
 12 and they say, "Here's the data. I want you to  
 13 see if there are flaws here. And we'll pay you  
 14 \$100 an hour for your work."

15 In the view of the secretary of state, is  
 16 that sharing the data outside of the  
 17 organization?

18 MS. LECOCQ: Objection.

19 **A. Yeah, that -- that is certainly a set of facts**  
 20 **that have not been explored currently by our**  
 21 **office in particular. What I can speak to,**  
 22 **again, is if it's considered a part of the**  
 23 **organization within that same entity, you know,**  
 24 **that's unlawful sharing of the data.**

25 BY MR. GREIM:

23 (Pages 86 to 89)

<p style="text-align: right;">Page 94</p> <p>1 <b>obtained that data.</b></p> <p>2 Q. Okay. So implicit within your referral, I</p> <p>3 think, is the secretary of state -- well, let</p> <p>4 me back up.</p> <p>5 The secretary of state understands</p> <p>6 that -- because they -- you've visited VRF's</p> <p>7 website, correct?</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. And on the website for New Mexico before the</p> <p>10 data was pulled down, you must click that you</p> <p>11 will only use the data for specific purposes,</p> <p>12 correct? Do you recall that?</p> <p>13 <b>A. I recall that being something that was</b></p> <p>14 <b>testified to. I didn't -- yeah, I recall</b></p> <p>15 <b>that -- somebody sharing that.</b></p> <p>16 Q. And so VRF is taking the position here that</p> <p>17 someone who agrees to use the data for</p> <p>18 permissible purposes, for the purposes that VRF</p> <p>19 wants to use the data for, is part of VRF. It</p> <p>20 forms an association with us to use this data</p> <p>21 for a certain purpose. Does the secretary of</p> <p>22 state agree with that position?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 <b>A. Again, I think you're going back to kind of</b></p> <p>25 <b>something that would require some additional</b></p>	<p style="text-align: right;">Page 96</p> <p>1 <b>to our office, pay for data, and then receive</b></p> <p>2 <b>the data.</b></p> <p>3 Q. And so my question is simply this: If Voter</p> <p>4 Reference Foundation makes a request with the</p> <p>5 affidavit, pays for the data and receives it,</p> <p>6 and then posts the data online for anyone who</p> <p>7 agrees to use it for lawful purposes, okay,</p> <p>8 which we know is true, we know the second thing</p> <p>9 is true, why does the secretary of state's</p> <p>10 office not recognize the viewers of VRF's data</p> <p>11 as being within the organization of VRF?</p> <p>12 MS. LECOCQ: Objection.</p> <p>13 <b>A. And, again, I think that's different than what</b></p> <p>14 <b>I responded to. So, one, I was clear that I am</b></p> <p>15 <b>not an attorney. I can't speak to what that,</b></p> <p>16 <b>you know, relationship is from a legal</b></p> <p>17 <b>perspective. I would need to take those facts</b></p> <p>18 <b>in particular and address it with our general</b></p> <p>19 <b>counsel or our attorney to get clarity on how</b></p> <p>20 <b>to apply the law in that specific scenario.</b></p> <p>21 <b>What I can state, however, is that there</b></p> <p>22 <b>is a specific process to lawfully obtain, and</b></p> <p>23 <b>that requires the affidavit.</b></p> <p>24 BY MR. GREIM:</p> <p>25 Q. Okay. I'm not asking you anymore about</p>
<p style="text-align: right;">Page 95</p> <p>1 <b>legal analysis, right, what is the relationship</b></p> <p>2 <b>between that individual and Voter Reference</b></p> <p>3 <b>Foundation.</b></p> <p>4 <b>What I will say is that, again, we feel</b></p> <p>5 <b>like the statute is very clear in that a</b></p> <p>6 <b>requester needs to complete an affidavit with</b></p> <p>7 <b>our office to be able to utilize, to receive</b></p> <p>8 <b>that data, and to use it for a permissible</b></p> <p>9 <b>purpose.</b></p> <p>10 <b>And so in that case, Voter Reference</b></p> <p>11 <b>Foundation, from our perspective, does not have</b></p> <p>12 <b>the authority to prescribe that affidavit.</b></p> <p>13 BY MR. GREIM:</p> <p>14 Q. Voter Reference Foundation doesn't have the</p> <p>15 authority to prescribe the affidavit?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. What do you mean by that?</p> <p>18 <b>A. The statute, our state statute requires that a</b></p> <p>19 <b>requester complete an affidavit. I know we</b></p> <p>20 <b>spoke about that pretty in depth. So there is</b></p> <p>21 <b>an appropriate lawful process to receive voter</b></p> <p>22 <b>data.</b></p> <p>23 Q. Right.</p> <p>24 <b>A. And one piece of that process is for a</b></p> <p>25 <b>requester to complete an affidavit, submit it</b></p>	<p style="text-align: right;">Page 97</p> <p>1 lawfully obtaining it, okay? We'll come back</p> <p>2 to that question.</p> <p>3 I'm asking you now about an organization</p> <p>4 that lawfully has the data. They want to share</p> <p>5 that data with other people and they know the</p> <p>6 issue is going to be: Is the secretary of</p> <p>7 state going to think these people are within</p> <p>8 the organization or are they not within the</p> <p>9 organization, okay?</p> <p>10 So my question to you is: Why does the</p> <p>11 secretary of state contend that people who</p> <p>12 agree, before they're given access to the data</p> <p>13 that they will only use it for lawful purposes,</p> <p>14 are not within the organization of VRF?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 <b>A. I don't understand your last statement. Are</b></p> <p>17 <b>you asking me a question?</b></p> <p>18 BY MR. GREIM:</p> <p>19 <b>Q. Okay. I was. I was. My question is -- I'm</b></p> <p>20 <b>trying to think of a way to break this down.</b></p> <p>21 <b>Let's look at it this way: If an entity,</b></p> <p>22 <b>with lawfully requested data, it sells that</b></p> <p>23 <b>data to its customers, but requires -- and it</b></p> <p>24 <b>makes it available to them on the Internet, but</b></p> <p>25 <b>it requires them to do that through a secure</b></p>

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1 connection, does the secretary of state say  
 2 that's okay, those customers are really within  
 3 the organization?  
 4 MS. LECOCQ: Objection.  
 5 **A. Again, you know, what I can speak to is either**  
 6 **in the organization or out of the organization.**  
 7 **That is the determination. That is the**  
 8 **position of the office. Your specific**  
 9 **hypothetical scenarios would require a specific**  
 10 **analysis on those facts that I am not able to**  
 11 **speak to.**  
 12 BY MR. GREIM:  
 13 Q. Because the data -- the statute doesn't speak  
 14 to those situations, does it?  
 15 **A. It speaks to within the organization or out of**  
 16 **the organization. That is clear from our**  
 17 **analysis based on the requirement that this**  
 18 **came to the office and we had to review those**  
 19 **specific facts. And so we've taken a position.**  
 20 **We are still, you know, of that same position**  
 21 **today; if it's in the organization, you can**  
 22 **share it. If it's not, no. And that has not**  
 23 **changed. But, you know, you're kind of coming**  
 24 **off with something that's outside of that**  
 25 **analysis --**

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1 Q. Okay.  
 2 **A. -- that would require some review.**  
 3 Q. Well, let's just make it this simple. The  
 4 secretary of state contends that VRF's sharing  
 5 with people who click on the link before  
 6 getting the data is not sharing within the  
 7 organization, correct?  
 8 MS. LECOCQ: Objection.  
 9 **A. I don't -- I don't have an awareness of us**  
 10 **taking that specific position that clicking on**  
 11 **a link is what determines if you're in or**  
 12 **outside of the organization.**  
 13 BY MR. GREIM:  
 14 Q. Well, I'd like to know what it is about VRF's  
 15 conduct that caused the referral, okay? And  
 16 certainly the secretary of state's office  
 17 visited the website. We know that, okay? And  
 18 the secretary of state's office encountered the  
 19 initial requirement that a user click that they  
 20 will agree to the terms of the use, including  
 21 that it be used for a lawful purpose.  
 22 **The secretary of state -- well, let me**  
 23 **ask you this: Can the secretary of state tell**  
 24 **us that they encountered that when they came on**  
 25 **to the website?**

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1 MS. LECOCQ: Objection.  
 2 **A. I don't recall that being a specific item that**  
 3 **was discussed. I can speak that I heard**  
 4 **testimony that that existed on the website. I**  
 5 **don't recall that being part of the analysis.**  
 6 BY MR. GREIM:  
 7 Q. Okay. Well, does the secretary of state  
 8 contend that, in fact, users who get on the  
 9 website to view the data don't have to click  
 10 first to agree that they'll only use the data  
 11 for permissible purposes?  
 12 MS. LECOCQ: Objection.  
 13 **A. I don't know what Voter Ref asks them when you**  
 14 **go into their website.**  
 15 BY MR. GREIM:  
 16 Q. Okay. And did the secretary of state ever  
 17 investigate that before making a criminal  
 18 referral?  
 19 **A. I think we certainly viewed the website and we**  
 20 **had an understanding that our voter data was**  
 21 **being publicly made available and it was being**  
 22 **made publicly available by an entity that did**  
 23 **not request that data from our office. And**  
 24 **that was the basis of the analysis.**  
 25 Q. Okay. So did the secretary of state make any

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1 effort to determine what users had to do before  
 2 they could view the data on VRF's website?  
 3 MS. LECOCQ: Objection.  
 4 **A. Again, I don't recall that being part of the**  
 5 **analysis.**  
 6 BY MR. GREIM:  
 7 Q. Who knows the answer to that question?  
 8 **A. I'm sure our attorney. But I just don't think**  
 9 **that was a key point. It was a fact that the**  
 10 **data was publicly available; it was a fact that**  
 11 **Voter Reference Foundation has not submitted**  
 12 **the appropriate affidavit to receive that data;**  
 13 **and it is a fact that our analysis about how**  
 14 **you may distribute that is leading to the**  
 15 **containment in the organization. So the World**  
 16 **Wide Web is not an organization.**  
 17 Q. So the secretary -- it didn't matter to the  
 18 secretary of state what someone had to agree to  
 19 before viewing the data on the website?  
 20 MS. LECOCQ: Objection.  
 21 **A. I wouldn't say it didn't matter. But I've**  
 22 **shared what our analysis was based on. You**  
 23 **know, again, going back to your original**  
 24 **question, if I click a box, does that**  
 25 **constitute being a part of Voter Reference**

26 (Pages 98 to 101)

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1 **Foundation as an organization? That is not**  
 2 **something that I am prepared to answer and**  
 3 **would require some analysis from an attorney.**  
 4 **If you're asserting that it somehow brings them**  
 5 **into your organization, I guess that's your**  
 6 **argument to make, but...**

7 BY MR. GREIM:

8 Q. The secretary of state didn't -- well, let me  
 9 ask you this -- you said what your analysis  
 10 was, okay. I'm trying to understand that a  
 11 little bit better.

12 A. Sure.

13 Q. So did the analysis at all depend on the  
 14 relationship that was formed between VRF and  
 15 the users of its website?

16 A. No.

17 Q. It was irrelevant?

18 A. It was not considered as part of the analysis.

19 Q. And it's possible -- because we can't ask you  
 20 again because this is our last day, I think we  
 21 have to leave it at this -- it's possible that  
 22 the secretary of state did not determine before  
 23 making the referral whether users, in fact, had  
 24 to click through and promise that they would  
 25 only use the data for permissible purposes?

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1 of the public had to do before accessing the  
 2 data. That's what these questions are about.

3 I'm going to ask it very -- just listen  
 4 very carefully. I'm going to speak slowly. I  
 5 know we're covering a lot of ground. Let's  
 6 just try to nail this down.

7 My question is: Did the secretary of  
 8 state's office determine, before making the  
 9 referral, what members of the public had to do  
 10 in order to get access to the data on VRF's  
 11 website?

12 A. And, again -- I will also speak slowly -- that,  
 13 in fact, our office did not utilize the fact  
 14 that there was a check box as a part of a  
 15 discussion for making a determination if it was  
 16 lawful or unlawful. And so, therefore, I  
 17 cannot speak if our attorney clicked the box.  
 18 What I know is that the office made a  
 19 determination based on the fact that voter data  
 20 was being publicly made available on the  
 21 Internet.

22 Q. My question is not what your determination was.  
 23 My question is: What did the secretary of  
 24 state's office know about how the website  
 25 worked? I'm not asking whether it mattered to

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1 MS. LECOCQ: Objection.

2 A. Again, I think I've been clear on the position  
 3 of the office that posting voter data online is  
 4 a public distribution of that data, and that  
 5 that is the position of the office.

6 BY MR. GREIM:

7 Q. That wasn't my question. Okay. My question is  
 8 what the secretary's office did before making  
 9 the referral. I'm not asking you to repeat  
 10 your position. We have that down.

11 My question is: Is it possible that no  
 12 one from the secretary of state's office looked  
 13 to see what members of the public had to do in  
 14 order to get access to the information on VRF's  
 15 website?

16 MS. LECOCQ: Objection.

17 A. And I, again, shared that it was not part of  
 18 the analysis.

19 BY MR. GREIM:

20 Q. I know it's not part of the analysis. I'm  
 21 trying to now probe your knowledge. I'm trying  
 22 to probe the knowledge of the office when it  
 23 made the referral; not its analysis, its  
 24 knowledge. And I'm trying to determine whether  
 25 the secretary of state determined what members

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1 you or not. I'm asking whether you knew. And  
 2 so whether an attorney wrote it or an  
 3 investigator in your office, either you knew or  
 4 you did not know, or you don't know whether he  
 5 knew. Okay, so I'm going to ask it one last  
 6 time.

7 Did the secretary of state's office know  
 8 what was required for members of the public to  
 9 do before they accessed the data on VRF's  
 10 website?

11 A. I don't know.

12 Q. Who would know the answer to that question?

13 A. I suspect our attorney.

14 Q. Do you know who investigated it? Was it an  
 15 attorney?

16 A. I think we talked about who was involved in  
 17 making a decision about referring it. So that  
 18 was myself, Deputy Secretary of State Sharon  
 19 Pino, general counsel Dylan Lange. And based  
 20 on all of the information we had in hand, we  
 21 made a decision to refer that.

22 Q. Okay. And there was no one else involved in  
 23 making that decision?

24 A. And as I shared, we made a recommendation and  
 25 the secretary of state did approve that

27 (Pages 102 to 105)



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1 referral.

2 MR. GREIM: Let's take another little  
3 break here.

4 (WHEREUPON, at this time a lunch break  
5 was taken.)

6 BY MR. GREIM:

7 Q. Back on the record. So I wanted to -- before  
8 we totally move past what we did at the end  
9 of -- before our break, I want to ask you about  
10 some other recipients of the voter data here.

11 Now, each political party requests the  
12 voter data, don't they, on a regular basis?

13 A. Yes.

14 Q. And do you recall testifying before that, you  
15 know, political parties sharing the data with  
16 volunteers would not be deemed sharing outside  
17 the organization?

18 A. Agreed.

19 Q. Okay. And the secretary of state does not go  
20 and ask the political parties to submit a --  
21 some sort of agreement from each volunteer for  
22 a party or document that in any way, correct?

23 A. No, if it's within that organization.

24 Q. And so how -- what is it that makes the  
25 volunteers part of the organization of a

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1 would require counsel. Well, yeah, I'm not  
2 going to suggest an answer to you. Let's just  
3 move ahead.

4 So let me -- let me ask you, I mean,  
5 political parties and candidates both use  
6 volunteers, you know that. And you know that  
7 candidates in this state and elsewhere hire  
8 political consultants to help run their  
9 campaigns, right?

10 A. Right.

11 Q. And I guess your testimony is that the  
12 secretary of state does not have a position, as  
13 we sit here today, as to whether the candidates  
14 sharing voter data with their paid consultants  
15 would constitute sharing within the  
16 organization?

17 A. We have not evaluated that particular fact.

18 Q. Now, what if I tell you -- I know I'm not from  
19 New Mexico, but if I tell you right here and  
20 now that I believe that political parties are  
21 sharing voter data that they receive -- that  
22 they lawfully receive with paid political  
23 consultants who are not part of the political  
24 party and not part of the candidate campaign,  
25 and I say I'm making a complaint and I believe

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1 political party?

2 A. I don't think there's any particular legal  
3 definition that I can point you to, but they  
4 are participating as a member of that  
5 organization. My understanding is they are  
6 staff of the organization.

7 Q. And what about a political party, you know,  
8 sharing the data with their political  
9 consultants that they pay for, would that be  
10 okay with the secretary of state's office?  
11 That does not count as sharing outside the  
12 organization?

13 A. I think we're back to, you know, in the  
14 organization, out of the organization, is there  
15 specific facts that need to be reviewed, then  
16 that would be something we would have to look  
17 at on an individual basis. But if it is part  
18 of their organization, that they can share.

19 Q. Well, and as I understand that -- I mean, I  
20 think -- I'm going to do a few more of these  
21 questions, and if you do not have an answer  
22 that require consulting with counsel --

23 A. Uh-huh.

24 Q. -- then I'd advise you to give me an answer if  
25 you can, but -- but just tell me that that

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1 they're doing it, I mean, what's stopping you  
2 from investigating?

3 A. Getting a complaint about an alleged violation,  
4 there is nothing that would stop us from  
5 looking into it.

6 Q. Okay. Now, let's talk about other requesters,  
7 other recipients of data. The group called the  
8 Public Interest Law Foundation requests data  
9 from the secretary of state's office, right?

10 A. Right.

11 Q. And would your position be that they cannot  
12 share the voter data with their own volunteers,  
13 or would it be that, just like political  
14 parties, their volunteers are okay to receive  
15 the data?

16 A. I think that we would handle it in the same  
17 way. So if they're a part of the organization,  
18 then they would be allowed to share the data.

19 Q. And you would not go to PILF, I'll call it, and  
20 say we need to see documentation proving that  
21 these volunteers are part of your organization?

22 A. As a practice, no. If we're made aware that  
23 something is happening outside the bounds of  
24 the law, then we may ask additional questions.  
25 But if they are affirming through the affidavit

28 (Pages 106 to 109)

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1 that they are using it lawfully, meaning they  
2 are not unlawfully sharing or distributing or  
3 selling, that is the document that we utilize  
4 to assess that they're going to follow the law.  
5 If we're made aware, then we would take a  
6 different step forward.

7 Q. Can VRF share data that it lawfully receives  
8 from the secretary of state's office with its  
9 own volunteers without violating the same  
10 organization issue?

11 A. If they're a part of the organization, anything  
12 that is a lawful part of an entity, that  
13 determination is not mine to make in this  
14 instant. But if it's sharing it within its own  
15 organization, that is the parameter. That is  
16 the position of our office that that's the  
17 parameter that we would ask an entity to  
18 follow. And we believe it's outlined in the  
19 affidavit.

20 Q. And volunteers count, just like they count for  
21 parties, correct?

22 A. Again, I think -- you know, you are I think  
23 stretching my answer a little bit there. I  
24 think my direct answer to you has been and will  
25 continue to be that the position of the office

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1 is that you have to be within the organization.  
2 And I continue to say that each scenario --  
3 facts that need to be evaluated, I think you  
4 said it best, would need to go to our counsel  
5 for an analysis to determine if it's lawfully a  
6 part of organization or not.

7 Q. Okay. So for VRF, the request would need to go  
8 to counsel, correct?

9 A. Under any circumstance, any relationship.

10 Q. So does -- the party's use of volunteer, that  
11 has gone to counsel?

12 A. I think that you asked me if I had testified to  
13 that fact, and my understanding is that they  
14 are -- what I said was my understanding was  
15 that they are employed with that organization.

16 Q. Well, obviously, volunteers for political  
17 parties are not employees of the parties.

18 A. They are staff is my understanding, is what I  
19 testified to and what I answered here today.

20 Q. Okay. Well, the -- let's just say this: You  
21 don't -- you're not backing away from what your  
22 testimony was before, correct? We can just go  
23 back and look to see what you say. You're not  
24 changing anything today?

25 A. I'm not changing anything today.

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1 Q. Okay. And I just want to be clear because you  
2 just used the word "employees." I take it your  
3 position is not that being within an  
4 organization is limited to employees, correct?

5 A. I have not stated that.

6 Q. Okay. Because volunteers are not paid, right?

7 A. Again, I think that, you know, you're asking me  
8 to analyze scenarios that have yet to come to  
9 our office.

10 What I can speak to is if you're a part  
11 of the organization. And you continue to ask  
12 me to, you know, make some legal analysis on  
13 hypothetical scenarios that I am not able to do  
14 in this moment. So I think it's the same  
15 question.

16 Q. Okay. But it's fair to say that the secretary  
17 of state's office, and you're here as the  
18 30(b)(6) witness, they have not actually  
19 undertaken a formal analysis on the questions  
20 I've asked you so far, you're not aware of any  
21 such analysis?

22 A. Correct.

23 Q. Well, let me ask you -- today VRF has voter  
24 data from the secretary of state's office. It  
25 has it. Can VRF share that voter data with its

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1 volunteers without violating the -- within the  
2 organization's restriction?

3 A. I don't have a different answer for you,  
4 Mr. Greim. If it's within your organization,  
5 you may share it.

6 Q. Right. My question is: Are volunteers within  
7 the organization?

8 A. Are they a part of the staff? I guess that  
9 goes back to the analysis that you're tying it  
10 to. So that is -- that was my testimony and  
11 that still is if they're a part of the  
12 organization.

13 Q. It's okay if they're unpaid?

14 A. I think the fact is are they a part of the  
15 organization or not. That is really what the  
16 requirement is.

17 Q. So do they -- do they need to have an agreement  
18 with the organization of any kind?

19 A. We have not outlined all of those logistical  
20 details. Right? Every scenario would require  
21 some analysis to determine if it's within the  
22 bounds of the statute or not.

23 Q. Okay. Well, I'm going to go just a bit further  
24 before we move on. So canvassers who walk door  
25 to door for candidates and political parties

29 (Pages 110 to 113)



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1 get a list of voter data that comes from the  
 2 secretary of state. And let's just stipulate  
 3 those door-to-door walkers are not employees,  
 4 they're not being paid, they're college  
 5 students. Is that unlawful activity?  
 6 MS. LECOCQ: Objection.  
 7 **A. I think -- I guess the question would remain**  
 8 **are they a part of the organization that**  
 9 **originally received the data. Again, the same**  
 10 **question.**  
 11 Q. So the secretary of state can't answer that  
 12 question?  
 13 **A. Not without additional review, agreed.**  
 14 Q. Now, remember I asked you about a couple of  
 15 for-profit groups such as Catalist and  
 16 Aristotle and i360, I think a couple of times  
 17 before in your prior testimony, right?  
 18 **A. Uh-huh.**  
 19 Q. And these are groups the district court made  
 20 factual findings about. Did you read the  
 21 district court's decision in this case?  
 22 **A. I did not.**  
 23 Q. Okay. Well, do you recall that I raised the  
 24 question of these groups requesting data from  
 25 the secretary of state and then charging

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1 clients to make the data available for them for  
 2 their own purposes? And I asked you whether  
 3 that counts as sharing outside the organization  
 4 of these for-profit companies like Catalist or  
 5 Aristotle. Do you recall that questioning?  
 6 **A. I recall similar questioning. I guess just to**  
 7 **be clear, who are they sharing with? I**  
 8 **didn't --**  
 9 Q. Customers.  
 10 **A. What does that mean?**  
 11 Q. It could be a candidate, it could be a  
 12 non-profit that wants to engage in advocacy.  
 13 And rather than requesting the data directly  
 14 from you, they go and they buy access to  
 15 databases from groups like Catalist and  
 16 Aristotle.  
 17 And when I mentioned this to you before,  
 18 I think you said you'd never heard of these  
 19 groups before, correct?  
 20 **A. Uh-huh.**  
 21 Q. Now, you know there is a record the secretary  
 22 of state has of the groups requesting data. I  
 23 take it you don't review that list every month  
 24 or something, right?  
 25 **A. I don't.**

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1 Q. Okay. And I think you said you never had a  
 2 complaint about those groups, which is why  
 3 you'd never looked into it before. Do you  
 4 recall that?  
 5 **A. Yes.**  
 6 Q. Okay. Now, I asked you specifically in your  
 7 testimony before the Court whether your office  
 8 would, in fact, go and look into these groups  
 9 to determine whether they were violating the  
 10 law. Do you remember that?  
 11 **A. If I received a complaint, is that what you**  
 12 **stated?**  
 13 Q. No, I didn't ask whether you received a  
 14 complaint. I just said based on the  
 15 information we had during the proceeding at  
 16 that time, whether your office would go and  
 17 look into those entities. Do you recall that?  
 18 **A. I recall a different statement.**  
 19 Q. Okay. What do you recall?  
 20 **A. What I recall was you being -- asking for**  
 21 **clarity and if we had an awareness that these**  
 22 **groups were violating the law, if we would look**  
 23 **into it.**  
 24 Q. I see. I see. Okay. Well, let me ask you:  
 25 Have you done anything since your testimony to

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1 look into whether these groups were violating  
 2 the law?  
 3 **A. No.**  
 4 Q. And let me ask you this: If a for-profit group  
 5 is receiving data from New Mexico and other  
 6 states and other sources of information and  
 7 then charging clients a fee for access to that  
 8 data, would that comply with your  
 9 within-the-organization requirement? Is that  
 10 sharing permissible?  
 11 **A. They're sharing it outside of the organization?**  
 12 Q. Yes, with their clients.  
 13 **A. So outside of their organization is a part of**  
 14 **this? That is the background?**  
 15 Q. Yeah, I'm asking whether that counts as outside  
 16 of the organization.  
 17 **A. Oh, you're asking me to make a determination?**  
 18 Q. Yeah.  
 19 **A. Again, you know, I'm not clear on who are these**  
 20 **entities. I don't know their relationship. If**  
 21 **it's within their organization, they're good.**  
 22 **If it's not, they can't share it.**  
 23 Q. What would it take for you to look deeper into  
 24 this question to decide whether the law is  
 25 being violated?

30 (Pages 114 to 117)

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1 **A. I think it would take just somebody making our**  
 2 **office aware of the practice, the allegation,**  
 3 **and the details of any violation, that's how we**  
 4 **handle all complaints.**  
 5 **Q. So if ProPublica contacted you about this, that**  
 6 **might be sufficient?**  
 7 **MS. LECOCQ: Objection.**  
 8 **A. If we're made aware of a potential violation,**  
 9 **our office has the authority to look into it.**  
 10 **BY MR. GREIM:**  
 11 **Q. And as of today, there's been no effort**  
 12 **whatsoever to look into what Catalyst or**  
 13 **Aristotle are doing?**  
 14 **A. We have not -- again, the fact remains that we**  
 15 **have not received any complaints nor allegation**  
 16 **that they have violated the law.**  
 17 **Q. Do you have a written policy that you won't**  
 18 **investigate without a complaint?**  
 19 **A. No.**  
 20 **Q. Okay. That's just a rule of thumb that the**  
 21 **office uses?**  
 22 **A. I think our office has limited resources, and**  
 23 **so we have to develop policies and procedures**  
 24 **that provide our office an opportunity to both**  
 25 **manage our workload and treat constituents**

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1 **equally. So we do have a policy and procedure**  
 2 **related to voter complaints. We receive**  
 3 **several on various matters. And in particular,**  
 4 **I think it's important to notice that the**  
 5 **distinguishing factor for Voter Reference**  
 6 **Foundation was it was online; that was the**  
 7 **alarming issue.**  
 8 **Q. Okay. So -- well, maybe let's ask about this**  
 9 **then. Is the office's position that sharing**  
 10 **outside the organization is okay so long as**  
 11 **it's not online?**  
 12 **A. No.**  
 13 **Q. Okay.**  
 14 **A. But to your point on -- you know, what in this**  
 15 **case -- it wasn't a complaint that we received,**  
 16 **right? We were made aware. We took an action**  
 17 **outside of that complaint process that there**  
 18 **was an immediate concern for public safety.**  
 19 **Q. What if a federal district court made you aware**  
 20 **of possible criminal activity, would that be**  
 21 **sufficient or would you need to receive it from**  
 22 **someone else?**  
 23 **A. I don't think there's any one single source,**  
 24 **right. It's simply a matter of being aware and**  
 25 **managing the appropriate resources and the**

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1 **appropriate priorities.**  
 2 **Q. Okay. I'm just going to read to you from the**  
 3 **district court's decision in this case,**  
 4 **document 51, pages 158 to 159.**  
 5 **"The Court found the secretary of state's**  
 6 **interpretation of the election code**  
 7 **criminalizes requesters, such as Catalyst,**  
 8 **i360, Data Targeting, and L2 Inc., who applied**  
 9 **for voter data and then sell it to clients**  
 10 **outside their own organization." That's at**  
 11 **pages 158 and 159. Now, having --**  
 12 **A. Sorry. What did it say, the Court determined**  
 13 **that?**  
 14 **Q. Yes. Yeah. This is from a court decision in**  
 15 **this case. So my question is: Was the**  
 16 **secretary of state aware of that statement and**  
 17 **the district court's decision?**  
 18 **A. Two questions ago I responded that I had not**  
 19 **read that decision.**  
 20 **Q. Okay. You haven't. But I take it that the**  
 21 **secretary of state -- the secretary of state**  
 22 **issued a press release about that decision,**  
 23 **right? So is it your testimony that the**  
 24 **secretary of state was unaware of that**  
 25 **statement and the Court's decision?**

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1 **A. Our office is currently aware of that decision.**  
 2 **Q. Okay. And so was why was that statement not**  
 3 **sufficient, a finding from a federal district**  
 4 **court, to at least look into whether Catalyst**  
 5 **and the other entities were violating the law?**  
 6 **MS. LECOCQ: Objection.**  
 7 **MS. SCHREMMER: Objection.**  
 8 **A. I don't think it's insufficient. I think, you**  
 9 **know, our office has limited resources.**  
 10 **There's nothing saying we won't look into it.**  
 11 **The question I've responded to as of right now,**  
 12 **we have not. That doesn't mean we won't.**  
 13 **BY MR. GREIM:**  
 14 **Q. Well, what additional information would it take**  
 15 **for you to look into these questions?**  
 16 **A. I don't think there is anything additional in**  
 17 **particular.**  
 18 **Q. So maybe one day somebody will check out one of**  
 19 **the websites and understand what they do with**  
 20 **their data?**  
 21 **MS. LECOCQ: Objection.**  
 22 **A. I have not heard anything that you have**  
 23 **presented here today that tells me that they**  
 24 **are publishing it online.**  
 25 **BY MR. GREIM:**

31 (Pages 118 to 121)

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1 Q. I see. So is that the threshold for  
2 determining -- for starting an investigation?  
3 A. It's not, but what I've spoken to is it was a  
4 deciding factor in the prioritization out of  
5 concern for our voters and voter rights and for  
6 their participation in the process.  
7 Q. Of course, the secretary of state also didn't  
8 make any effort to determine how the general  
9 public was actually accessing the data on the  
10 website, did it?  
11 MS. LECOCQ: Objection.  
12 A. I'm sorry?  
13 BY MR. GREIM:  
14 Q. We'll just strike that and move on.  
15 I want to now change gears a little bit.  
16 And we'll talk about the -- this allegation of  
17 disinformation.  
18 Is it the secretary's position that the  
19 sharing of out-of-date voter data could  
20 constitute disinformation?  
21 A. I think there's a potential, yes.  
22 Q. Okay. And explain that to us.  
23 A. Sure. So the voter registration database, the  
24 voter's file, or the roll as we call it, it's a  
25 dynamic file. It's ever changing. There are

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1 constant updates being made. And so it's a  
2 point in time anytime somebody receives that  
3 data.  
4 And if we're doing comparisons, I think  
5 anytime you're analyzing data, it's important  
6 to be comparing the same type of data, right?  
7 We can't take something from years ago and look  
8 at it for a specific election.  
9 So I think the concern is that outdated  
10 data does present the potential for  
11 misinformation.  
12 Q. Okay. Now, in this case, VRF posted data  
13 online after winning a preliminary injunction  
14 from the district court. Do you recall that?  
15 A. Uh-huh.  
16 Q. And the data that it posted at that time was  
17 the only data that it was able to receive  
18 through your office, right?  
19 A. Right.  
20 Q. Now, by that time, that was not the most recent  
21 information that it had -- that was -- I'm  
22 sorry. That was not the most recent version of  
23 the voter file, was it?  
24 A. No.  
25 Q. Does the secretary contend that VRF was

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1 engaging in disinformation when it reposted  
2 that data?  
3 A. I think it was not the data alone.  
4 Q. Okay. What else was it?  
5 A. I feel like there is information explaining the  
6 data that was not accurate.  
7 Q. Okay. So when VRF reposted its data online, it  
8 was not just the data but was the accompanying  
9 explanation that made it disinformation?  
10 A. It was the comparison. As I said, I spoke to  
11 you're comparing -- they were comparing  
12 outdated data to election results that were --  
13 it wasn't a correct accurate comparison. There  
14 wasn't an understanding for the viewer as to  
15 the details, very important details, to share  
16 facts about the data.  
17 Q. Okay. So what you're referring to there is the  
18 statement that was made about there being a  
19 discrepancy between the voting credits shown in  
20 the data file that VRF received and a separate  
21 data source which was the number of ballots  
22 cast in the election, right?  
23 A. Correct.  
24 Q. So -- and I think we all know what that  
25 statement was. My question for you is a little

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1 bit different though, okay? And it may be  
2 that -- it may be that you'll have a different  
3 answer.  
4 I'm asking about whether posting the data  
5 online itself, with no other statement about a  
6 discrepancy itself, is misinformation?  
7 A. I think it's important to note that's not what  
8 happened. So our position on the  
9 misinformation was tied to the data being  
10 posted publicly, outdated data, with an  
11 analysis about a discrepancy that was  
12 inaccurate. So that was the misinformation  
13 issue.  
14 (WHEREUPON, Deposition Exhibit 6 was  
15 marked for identification.)  
16 BY MR. GREIM:  
17 Q. Okay. I don't want to -- I'm just going to  
18 show you your own interrogatory response. This  
19 is an earlier set of interrogatories. We're  
20 going to mark this as Exhibit 6. And if you go  
21 to page 6 -- by the way, I'll tell you -- I'll  
22 represent to you that attached here that we do  
23 have your verified statement for this set of  
24 interrogatories.  
25 So on page 6 you'll see there's something

32 (Pages 122 to 125)

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1 called Interrogatory Number 7, and it asks the  
2 secretary of state to "Identify any and all  
3 misinformation, including regarding the 2020  
4 general election, you believe VRF has or  
5 intends to spread on its website VoteRef.com."

6 And so there's a response saying, you  
7 know, we can supplement it, we're still  
8 learning.

9 Then there's a larger paragraph below  
10 there. And the very first sentence says, "The  
11 secretary believes that publication of voter  
12 data writ large may constitute misinformation.  
13 The New Mexico voter file is a living document  
14 that is constantly updated by state and county  
15 agencies. If a private individual or entity  
16 were to obtain a copy of the voter file, that  
17 copy would be out of date and bearing erroneous  
18 information before the private individual or  
19 entity even had a chance to publish the copy.  
20 The only proper, accurate way to look up voter  
21 information is through the New Mexico secretary  
22 of state or county clerks."

23 Did I read that right?

24 **A. Yes.**

25 **Q.** And that's a statement that you swore to in

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1 voter data may constitute misinformation?

2 **A. And I think my question was: What is your**  
3 **understanding of that definition?**

4 **Q.** Well, I'm asking you, okay? I -- I mean, this  
5 is your answer. I didn't choose those words.

6 So, I mean, do you agree with me that the  
7 secretary -- and if not, just tell me. I mean,  
8 if the secretary does not contend that posting,  
9 you know, voter data from eight months ago is  
10 itself misinformation, then we can -- we're  
11 going to move on. But it sounds to me like the  
12 secretary is saying that it does constitute  
13 misinformation.

14 **A. I think I answered initially when we started**  
15 **this line of questioning that providing and**  
16 **publishing inaccurate, incomplete, out-of-date**  
17 **data does provide a potential for**  
18 **misinformation.**

19 **Q.** Okay. And what if -- what if the publication  
20 actually discloses when the data file was  
21 received, does that fix the problem or no?

22 **A. No.**

23 **Q.** Why not?

24 **A. Because I think that of our election**  
25 **administrators or kind of really -- you know,**

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1 your response to these questions. And is that  
2 still an accurate statement of the secretary's  
3 position?

4 **A. Yes.**

5 **Q.** Okay. And so let me just go back. I mean, I  
6 understand that -- the allegation that the  
7 analysis that VRF published that accused -- or  
8 that said that there was a discrepancy, the  
9 contention that that is misinformation. I'm  
10 asking you now, though, whether the publication  
11 of voter data writ large as stated in that  
12 response can also constitute misinformation?

13 MS. LECOCQ: Objection.

14 **A. Can you just clarify for me --**

15 BY MR. GREIM:

16 **Q.** Sure.

17 **A. -- obviously, I didn't use this word -- of what**  
18 **you believe "writ large" is referring?**

19 **Q.** That's your answer, not mine, right? That's  
20 not my answer, that's your answer.

21 So you say the secretary believes the  
22 publication of voter data writ large may  
23 constitute misinformation.

24 So I'm asking you: Given that statement,  
25 do you agree with me that simply publishing the

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1 the average voter, typically as -- isn't as  
2 educated on this process. You know, we work to  
3 educate them, but I don't think they're going  
4 to understand the complexities if there's  
5 someone who is making a claim of a discrepancy  
6 without context.

7 **Q.** Okay. And now I'm just -- I'm not asking you  
8 about the discrepancy anymore, okay? We got  
9 your full testimony on that.

10 My question now is: Is the mere fact of  
11 publishing old voter data, putting on the  
12 Internet saying here is the New Mexico voter  
13 data, this file was obtained in April of 2021,  
14 is that misinformation? Is that the  
15 secretary's position in this case?

16 **A. Our position is that it invites and provides**  
17 **for a potential of misinformation.**

18 **Q.** Because the people who read it are not properly  
19 educated and they may not understand the  
20 disclosure?

21 **A. I think the data, without an understanding or**  
22 **without context or without explanation, makes**  
23 **it difficult to understand.**

24 **Q.** And the secretary's position is that posting  
25 when and how the data was received isn't

33 (Pages 126 to 129)

Page 130

1 enough, correct, to --  
 2 **A. Correct.**  
 3 **Q. -- to correct the misinformation?**  
 4 **A. Yes.**  
 5 **Q. Okay. And why is that? It's because -- well,**  
 6 **strike that. You answered why.**  
 7 **Does the secretary of state have**  
 8 **information in this case that particular users**  
 9 **of VRF's website were misinformed when viewing**  
 10 **the data and the disclosures online?**  
 11 **A. Sorry, if you can repeat that.**  
 12 **Q. Does the secretary of state have any**  
 13 **information in this case that particular users**  
 14 **of VRF were misinformed when accessing the data**  
 15 **and the disclosures on VRF's website?**  
 16 **MS. LECOCQ: Objection.**  
 17 **A. Not particular users. I think I shared earlier**  
 18 **that we had voters contact us out of concern**  
 19 **for their data being on the site.**  
 20 **BY MR. GREIM:**  
 21 **Q. And, right, that's not my question. I'm asking**  
 22 **you about worry that users of VRF are being**  
 23 **misinformed.**  
 24 **A. Did you say worry of it?**  
 25 **Q. Yeah. I'm asking whether the secretary of**

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1 state has information that this misinformation  
 2 is occurring?  
 3 **MS. LECOCQ: Objection.**  
 4 **BY MR. GREIM:**  
 5 **Q. Have you learned that someone has looked at the**  
 6 **VRF website and become misinformed about the**  
 7 **voter process?**  
 8 **MS. LECOCQ: Objection.**  
 9 **A. As a representative of the office, I can share**  
 10 **that anecdotally we received concerned**  
 11 **individuals contacting our office asking about**  
 12 **discrepancies certainly, and asking about how**  
 13 **they could get their data off the site. Those**  
 14 **were the calls we were receiving.**  
 15 **BY MR. GREIM:**  
 16 **Q. Okay. So individuals --**  
 17 **A. Confusion about understanding what was posted,**  
 18 **confusion about how it got there. They**  
 19 **believed we were posting their data. So there**  
 20 **was certainly calls to our office about**  
 21 **confusion related to Voter Ref posting data**  
 22 **online.**  
 23 **Q. Okay. Were they confused about what the data**  
 24 **represented?**  
 25 **A. Yes.**

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1 **Q. Okay. Do you have any records of this?**  
 2 **A. I can certainly go back and look.**  
 3 **Q. We've already asked for it. Do you have -- did**  
 4 **you personally speak to any voters who were**  
 5 **confused about the data online?**  
 6 **A. I do not personally. My team did.**  
 7 **Q. Who?**  
 8 **A. I would have to find the phone log, but in**  
 9 **particular, we had a paralegal who was tracking**  
 10 **things on behalf of the office and he received**  
 11 **calls he made me aware of.**  
 12 **Q. And you've produced all of your tracking**  
 13 **spreadsheets already, right?**  
 14 **A. Right.**  
 15 **Q. When you say voters were confused -- so you**  
 16 **said they were confused about who had actually**  
 17 **posted the data online?**  
 18 **A. Correct. We got voters calling us saying take**  
 19 **me off your list that you have on the website.**  
 20 **Q. Okay. So maybe VRF engaged in misinformation**  
 21 **by not making it clear that it's VRF's website**  
 22 **and not yours?**  
 23 **MS. LECOCQ: Objection.**  
 24 **A. We clearly had voters that did not understand**  
 25 **who posted that or where it came from and**

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1 **believed it was our office.**  
 2 **BY MR. GREIM:**  
 3 **Q. Okay. The secretary of state doesn't make any**  
 4 **allegation here that VRF is impersonating the**  
 5 **secretary of state or --**  
 6 **A. No.**  
 7 **Q. -- trying to act as if it is an official**  
 8 **office?**  
 9 **A. No.**  
 10 **Q. Okay. We've noticed online that there's a new**  
 11 **tab that says that the online system has**  
 12 **real-time updates now.**  
 13 **MS. LECOCQ: Objection.**  
 14 **BY MR. GREIM:**  
 15 **Q. Is that correct?**  
 16 **A. I'm not clear as to what you're referring to.**  
 17 **Q. Okay. Going on the secretary of state's**  
 18 **website -- well, you don't have it printed off**  
 19 **here. But let me just ask you: Does the**  
 20 **secretary of state hold out that its website is**  
 21 **up to date, it's like to the minute in**  
 22 **real-time?**  
 23 **MS. LECOCQ: Objection.**  
 24 **A. I'm just -- I mean, we have a website --**  
 25 **BY MR. GREIM:**

34 (Pages 130 to 133)



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1 Q. You have a website --  
 2 **A. -- but I don't know what data would be being**  
 3 **updated in real-time on the website.**  
 4 Q. Okay. Well, there's -- okay. There's a  
 5 website and there's a portal. Let's talk about  
 6 that. Maybe I'm using the wrong term.  
 7 **A. Okay.**  
 8 Q. There is a -- there is a portal, is there not?  
 9 **A. A voter information portal.**  
 10 Q. Right. And is that updated in real-time?  
 11 **A. Yes.**  
 12 Q. Okay. And any person who goes on there who  
 13 enters the correct information for a voter is  
 14 going to get the absolute most up-to-date  
 15 version of voter data for that voter, correct?  
 16 **A. Yeah, that source is our voter registration**  
 17 **database.**  
 18 Q. The database itself?  
 19 **A. Yes.**  
 20 Q. And anyone with the first and last name and  
 21 birthday of a voter can pull that voter's  
 22 information off the website, correct?  
 23 **A. Correct.**  
 24 Q. Now, is the secretary of state aware of anyone  
 25 using its website for an improper purpose?

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1 on the portal, does it?  
 2 **A. I don't believe so.**  
 3 Q. Is the secretary of state aware of anyone using  
 4 VRF's website for illegal purposes?  
 5 MS. LECOCQ: Objection.  
 6 **A. Using the website? Sorry, can you --**  
 7 **BY MR. GREIM:**  
 8 Q. Sure. Let me back up. So there was a time  
 9 when VRF had New Mexico voter data available on  
 10 its website, correct?  
 11 **A. Correct.**  
 12 Q. And I'm just asking whether the secretary of  
 13 state knows of anyone accessing the voter data  
 14 on VRF's website using it for an improper  
 15 purpose?  
 16 MS. LECOCQ: Objection.  
 17 **A. We wouldn't have a way to track that**  
 18 **information.**  
 19 **BY MR. GREIM:**  
 20 Q. I understand that. I understand that you don't  
 21 have some special way to look into it. I'm  
 22 just asking if you have any information that  
 23 that's ever occurred?  
 24 **A. And specifically you asked me that somebody was**  
 25 **stalking someone --**

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1 MS. LECOCQ: Objection.  
 2 **BY MR. GREIM:**  
 3 Q. Let me -- yeah, let me ask you a better  
 4 question.  
 5 Is the secretary of state aware of anyone  
 6 using its website to stalk other people?  
 7 **A. Our website?**  
 8 Q. Yeah, using the portal.  
 9 **A. I don't have any knowledge of that.**  
 10 Q. Okay. Let me -- would the secretary of state  
 11 know if someone were just putting someone's  
 12 name and birthday into the portal and learning  
 13 where they live?  
 14 **A. We wouldn't unless we were made aware.**  
 15 Q. And the secretary of state doesn't require  
 16 people using the portal to certify that they're  
 17 using the information to look up their -- that  
 18 the portal -- to look up their own information,  
 19 do they?  
 20 **A. I haven't walked through the screens in a**  
 21 **while, but I don't recall any sort of**  
 22 **affirmation.**  
 23 Q. In fact, it doesn't require any affirmation  
 24 about the purposes for which someone is  
 25 entering in the information and making a query

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1 Q. Well, I -- yeah, let's start with stalking.  
 2 Are you aware of anyone getting on the VRF  
 3 website and the New Mexico data was posted and  
 4 they were using that information to stalk  
 5 someone?  
 6 **A. I don't have an awareness of somebody stalking**  
 7 **someone off that.**  
 8 Q. Okay. Well -- and let's go to some other  
 9 things, too. Are you aware of anyone getting  
 10 onto the VRF website and using it to come up  
 11 with a list to solicit -- to make commercial  
 12 solicitations?  
 13 **A. I don't have that specific information, no.**  
 14 Q. Okay. I mean, I guess let's just -- I'm not  
 15 going to go through a long list. Is it fair to  
 16 say the secretary of state has no information  
 17 about anyone getting on the VRF website, when  
 18 it had the New Mexico voter data, and using it  
 19 for any improper purpose?  
 20 MS. LECOCQ: Objection.  
 21 **A. You're asking me to kind of -- and just so I'm**  
 22 **clear, are you asking me if we have an**  
 23 **awareness of a connection to a voter being**  
 24 **harassed, stalked, any sort of criminal -- like**  
 25 **when you say improper use --**

35 (Pages 134 to 137)

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1 BY MR. GREIM:  
 2 Q. Okay. All right. We'll go through. So I'm  
 3 asking -- I mean, I asked about stalking  
 4 already. I think we got an answer to that  
 5 question. Okay.  
 6 Let's -- let's go criminal purposes.  
 7 Does the secretary of state have any  
 8 information that any person has gotten on the  
 9 VRF website that had the New Mexico voter data  
 10 and used that data for a criminal purpose?  
 11 A. No.  
 12 Q. Does it have any information that any person  
 13 got on the VRF website when it had New Mexico  
 14 voter data and used that data to engage in  
 15 misinformation about elections?  
 16 MS. LECOCQ: Objection.  
 17 A. I don't have any direct knowledge.  
 18 BY MR. GREIM:  
 19 Q. Okay. Do you have indirect knowledge that this  
 20 happened?  
 21 A. I think that our office -- you know, we  
 22 received calls. I spoke to questions and  
 23 concerns from voters. And we also had  
 24 individuals that contacted our office at a  
 25 similar window of time related to a separate

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1 issue that was taking place in one of our  
 2 counties.  
 3 Q. Who were the voters who called?  
 4 A. I think we provided the list of any voters that  
 5 we received that felt like they were being  
 6 potentially intimidated based on an issue  
 7 happening in one of our counties.  
 8 Q. Okay. That's Otero County, right?  
 9 A. Correct.  
 10 Q. Does the secretary -- and now it's been well  
 11 over a year. Does the secretary of state --  
 12 well, that may not be right. It's been some  
 13 time.  
 14 Does the secretary of state's office have  
 15 any information that the Otero County group was  
 16 connected in any way with VRF?  
 17 MS. LECOCQ: Objection.  
 18 A. I don't have any understanding that they were  
 19 directly connected, no.  
 20 BY MR. GREIM:  
 21 Q. Do you have any --  
 22 A. I think your question was: Do we believe that  
 23 anyone may have obtained data through the  
 24 website and used it improperly.  
 25 Q. That was the original question. Okay. You

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1 said you had indirect knowledge.  
 2 So let me ask you this: Do you have  
 3 any -- my question that you answered, seeming  
 4 to have information, was that you didn't know  
 5 of any connection between the two groups.  
 6 Now I'm going to ask you: Do you have  
 7 any information at all that the Otero County  
 8 group got their data from VRF?  
 9 MS. LECOCQ: Objection.  
 10 A. No.  
 11 BY MR. GREIM:  
 12 Q. In fact, the secretary of state's office now, I  
 13 think, knows how the Otero County group got  
 14 their data, doesn't it?  
 15 MS. LECOCQ: Objection.  
 16 A. I don't know that we're here to speak on that,  
 17 but I don't.  
 18 BY MR. GREIM:  
 19 Q. Okay. Do you have any evidence that VRF has  
 20 manipulated the data that was posted on its  
 21 website?  
 22 A. No.  
 23 Q. How many voters have canceled their voter  
 24 registration because of VRF's publication of  
 25 voter data on its website?

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1 MS. LECOCQ: Objection.  
 2 A. Aside from the inquiries and the calls and the  
 3 log that you've been provided tied to voters  
 4 and concerns with this issue, there would be no  
 5 way for us to have a voter affirm that.  
 6 BY MR. GREIM:  
 7 Q. So let's just be very clear. The secretary of  
 8 state has no knowledge of any voter that has  
 9 canceled his or her registration because of  
 10 VRF's website?  
 11 MS. LECOCQ: Objection.  
 12 A. I don't. I think we have knowledge that voters  
 13 were concerned --  
 14 BY MR. GREIM:  
 15 Q. Okay.  
 16 A. -- and reached out asking us how they could  
 17 remove themselves because they didn't want to  
 18 potentially risk their information being made  
 19 public. I do not have a list of voters that  
 20 have affirmed that they canceled because of  
 21 Voter Ref.  
 22 Q. Any every phone call you received, that inquiry  
 23 has been documented and produced to us,  
 24 correct?  
 25 A. Any that staff tracked have been, yes.

36 (Pages 138 to 141)



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- 1 Q. Okay. Do you claim that there are others that  
2 we don't know about that staff didn't track?
- 3 **A. I think, you know, initially when we were first**  
4 **learning about those concerns, we weren't at a**  
5 **place to have that process established. So I**  
6 **do believe there were some additional, but I do**  
7 **feel like the majority were tracked.**
- 8 Q. I'm going to ask you a little bit about the  
9 interest that the secretary of state has  
10 alleged it's trying to advance by enforcing the  
11 statutes at issue here. You've actually  
12 covered a little bit of this already, but  
13 there's a few things we didn't cover.
- 14 So I understand the secretary of state to  
15 contend that the -- that one reason for  
16 requiring the affidavit process that we've  
17 talked about and requiring that users of the  
18 data directly request that from the secretary  
19 of state is in order to generate revenue to run  
20 the voter data system.
- 21 **A. Is that --**
- 22 Q. Is that correct?
- 23 **A. Is that somewhere?**
- 24 Q. Yeah, I don't -- I don't have it. It's in  
25 your -- I mean, I'm just going to ask a

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- 1 question. If you disagree that that's one of  
2 the reasons to enforce it, then that's okay,  
3 we'll just move on. Or if you're not sure,  
4 we'll just move on.
- 5 MS. LECOCQ: Sorry. I just want to note  
6 that our standing objection to legal  
7 contentions are still standing.
- 8 BY MR. GREIM:
- 9 **Q. So is an important reason to require groups**  
10 **like VRF to request the data directly from the**  
11 **secretary of state and then not share it with**  
12 **people outside the organization that the**  
13 **secretary of state wants to generate revenue**  
14 **from user fees to help pay for the voter data**  
15 **system?**
- 16 MS. LECOCQ: Objection.
- 17 **A. I think from the office's perspective, I think**  
18 **that's a reason. That is not our primary**  
19 **reason by any means.**
- 20 BY MR. GREIM:
- 21 Q. Okay. But it's one of the reasons?
- 22 **A. It is a reason to make sure we have revenue to**  
23 **maintain our system, but that is absolutely not**  
24 **the priority.**
- 25 Q. What would you say -- what is the priority?

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- 1 **What is the main reason that the secretary of**  
2 **state does not want VRF to be able to request**  
3 **the data from the secretary of state's office**  
4 **and then share it online with people who agree**  
5 **to use it for VRF's purposes? What's -- what's**  
6 **the reason why the secretary of state wants to**  
7 **enforce that?**
- 8 MS. LECOCQ: Same objection.
- 9 **A. Sure. The secretary of state's office wants to**  
10 **follow state law. We want to ensure that we**  
11 **are adhering to the appropriate process that's**  
12 **defined in our state law. And we feel like the**  
13 **intention behind an appropriate administration**  
14 **of that provision provides for us to maintain a**  
15 **record of individuals that are requesting the**  
16 **data.**
- 17 **I think it's important because it's the**  
18 **only mechanism to be able to go back and track**  
19 **if somebody does use it unlawfully. If we do**  
20 **see an instance of stalking or harassment or**  
21 **intimidation, it is the only way that we have**  
22 **an ability to manage who is receiving that data**  
23 **and potentially a tool for enforcement to**  
24 **follow the law. That's our priority.**
- 25 BY MR. GREIM:

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- 1 Q. And has the secretary of state actually used  
2 its record of individuals who requested the  
3 data to investigate instances of harassment?
- 4 MS. LECOCQ: Objection.
- 5 **A. Yes.**
- 6 BY MR. GREIM:
- 7 Q. It did so in the Otero County case, right?
- 8 **A. Correct.**
- 9 Q. Other than Otero County, has it done it any  
10 other time?
- 11 **A. Other than a review -- not for harassment, but**  
12 **we did take a look at our logs when we felt**  
13 **like there was a potential violation by**  
14 **Voter Ref by posting it online. That was**  
15 **another opportunity for us to refer to that**  
16 **record. And we were able to identify that it**  
17 **had not been lawfully obtained.**
- 18 Q. So Otero County and VRF. Any other examples?
- 19 **A. The Local Labs in the distribution of the data.**
- 20 Q. Okay. The Otero County and VRF, Local Labs,  
21 any other examples?
- 22 **A. No.**
- 23 **Q. Okay. So does the secretary of state require**  
24 **Catalist or i360 or Aristotle to share the**  
25 **identities of its customers who purchased the**

37 (Pages 142 to 145)

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1 data?

2 **A. I don't think we require any requester to**

3 **identify anything more than what's on the**

4 **affidavit.**

5 **Q. Well, let's say the secretary of state did**

6 **require their requesters to keep a log of each**

7 **person who shared the data with them. Why**

8 **wouldn't that equally satisfy your interest of**

9 **being able to trace possible abuses?**

10 **A. Number one, we don't require that.**

11 **Q. I understand. I'm asking why wouldn't**

12 **requiring that yield the same result?**

13 **A. Because it's not following the statute.**

14 **Q. I understand that. I understand what the**

15 **statute says. My question is: Why wouldn't**

16 **requiring the requesters who first get the data**

17 **to keep a log of who they share it with achieve**

18 **the same result of compiling a record of people**

19 **who access the data?**

20 **MS. LECOCQ: Objection.**

21 **A. I think that we're -- there's only -- that's**

22 **one piece of the statute, right? There's a**

23 **secondary piece that requires a payment. And**

24 **there's also a secondary piece that requires an**

25 **affirmation of that separate entity to affirm**

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1 **that they will also comply with the statute.**

2 **BY MR. GREIM:**

3 **Q. Okay. And I -- we'll get to the other uses of**

4 **the statute. I'm sticking right now to the**

5 **interest in being able to trace who had access**

6 **to the data, okay? I'm not asking about**

7 **payment right now. I'm asking about why -- I**

8 **mean, and if you don't know, you don't know.**

9 **But my question is: Why wouldn't requiring the**

10 **requesters to maintain a record of individuals,**

11 **whom they share the data, yield the same**

12 **benefit as keeping your own list of the initial**

13 **set of requesters? Either way you've got a**

14 **list of everybody who accessed the data.**

15 **MS. LECOCQ: Objection.**

16 **BY MR. GREIM:**

17 **Q. Why isn't it good enough to have the requesters**

18 **keep their own list?**

19 **A. Sure. That's one piece of my answer, but I**

20 **gave you other reasons. So there was, you**

21 **know, a broader picture. And so we can't just**

22 **point to one piece of the statute, right? We**

23 **are required to administer the statute in its**

24 **entirety --**

25 **Q. I know.**

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1 **A. -- and so that's our obligation, that's our**

2 **authority. And the hypothetical that you're**

3 **speaking to just isn't reality.**

4 **Q. Well, I'm asking about the State's interest.**

5 **I'm not asking you what the statute says. In**

6 **this case, on the constitutional question there**

7 **are questions of fact about what is the State's**

8 **interest and is this the most narrowly tailored**

9 **version of a law. Okay. So I'm not asking you**

10 **anymore about what the law says. I'm asking**

11 **you about what does the State lose -- how is**

12 **the State worse off by simply having the**

13 **requesters keep a record of the individuals to**

14 **whom they grant access so that if there is an**

15 **illegal use the secretary of state can simply**

16 **go to the requesters and say who have you**

17 **shared it with?**

18 **MS. LECOCQ: Objection.**

19 **BY MR. GREIM:**

20 **Q. Why is that insufficient to meet the interest**

21 **that you raised regarding tracing who dealt**

22 **with it?**

23 **MS. LECOCQ: Objection.**

24 **A. And I would just reiterate that that's one**

25 **interest. So what we lose is the opportunity**

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1 **to kind of respond to all of our interests,**

2 **right? That's not our only interest.**

3 **BY MR. GREIM:**

4 **Q. Okay. Let's go ahead -- let's talk about the**

5 **other interests then. So you lose the ability**

6 **to generate revenue from the other requesters,**

7 **right?**

8 **A. Sure.**

9 **Q. Okay. And what else do you lose, if there's**

10 **other things you lose, too? You mentioned**

11 **something else earlier.**

12 **A. I don't remember saying that we lose**

13 **anything --**

14 **Q. Let me -- I'll help you. You said -- I think**

15 **you said there's the State interest in making**

16 **sure that the individuals who get access to the**

17 **data agree to use it for the purposes that are**

18 **permitted under New Mexico law. You didn't use**

19 **those words, but I think that's what you were**

20 **getting at. Do you recall that?**

21 **A. And I think, you know, you asked me what's our**

22 **priority, what's our interest, and I think I**

23 **said first and foremost it's to follow the**

24 **state law. And so I'm just reiterating that**

25 **that is our interest. And there's not just**

38 (Pages 146 to 149)

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1 **this one provision, you know, it is a bigger**  
2 **picture than that.**

3 Q. I understand. And we can stipulate that the  
4 secretary of state's office says that it wants  
5 to follow the state law. You've said that.  
6 That's not what I'm talking about, though.  
7 That's not what these questions go to. I'm  
8 trying to understand the interest.

9 So we've talked about the payment  
10 interest. We've talked about the tracing  
11 interest. And I'm trying to get you now to  
12 talk about the third interest that I could  
13 swear I heard you say, I think I've read in  
14 your briefing, which is the State wants to have  
15 some way to ensure that the people who receive  
16 access to the data are going to use it for the  
17 purposes that are allowed under the statute.  
18 Do you agree that that's --

19 **A. I agree.**

20 Q. That's an important State interest, isn't it?

21 **A. Yes.**

22 Q. Okay. And the way that you satisfy that  
23 interest now is by having the person who  
24 directly contacts the SOS's office sign the  
25 affidavit that lists what the purposes are,

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1 same use requirements that the initial  
2 requester manifested their assent to. So  
3 what's lost by having the person who receives  
4 it is from initial requester agree to the same  
5 conditions?

6 **A. Like, by how -- like, through what mechanism?**

7 Q. Well, for example, by on the website saying I  
8 agree to only use it for these purposes before  
9 getting access to it?

10 **A. I think, number one, for uniformity, generally,**  
11 **it's important that when our office is**  
12 **prescribing a form, it's our official form, I**  
13 **think we want to maintain that uniformity and**  
14 **consistency of the election polls overall.**

15 **But, two, I think we lose the opportunity to**  
16 **educate directly from our office and to receive**  
17 **that affirmation directly to our office.**

18 Q. Okay. So there's some benefit in the fact that  
19 the form comes directly from the office?

20 **A. Consistent and it's uniform.**

21 Q. Okay. Okay, so -- okay, I understand. Any  
22 other interests there, other than uniformity?

23 **A. Not in addition to what we've already gone**  
24 **over.**

25 Q. Okay. Let me ask you about the Safe at Home

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1 right?

2 **A. Whoever is going to receive the data, completes**  
3 **the affidavit affirming those items.**

4 Q. Okay. And so my question to you -- and you  
5 would agree that, from the State's perspective,  
6 that is sufficient -- the affidavit is  
7 sufficient to satisfy the State's interest in  
8 ensuring that the recipients of the data who  
9 came and requested it from the secretary of  
10 state's office, understand that what they're  
11 supposed to do and not do with the data, right?

12 **A. Yes.**

13 Q. And so my question to you is: How does the  
14 State lose anything by having the individuals  
15 who might receive access to the data from the  
16 initial requesters also agree that they are  
17 going to use it for the purposes permitted  
18 under New Mexico law? What's lost there from  
19 the State's perspective?

20 MS. LECOCQ: Objection.

21 BY MR. GREIM:

22 Q. If anything?

23 **A. Are you saying also agreed, what, through a**  
24 **different entity?**

25 Q. Yeah, they manifest their assent to the extent

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1 program; that's come up a few times as well.  
2 There are some people who want to be removed  
3 from the list who don't satisfy the  
4 Safe at Home program, correct?

5 **A. Correct.**

6 Q. And so is anything stopping New Mexico from  
7 changing the requirements of the Safe at Home  
8 program?

9 MS. LECOCQ: Objection.

10 BY MR. GREIM:

11 Q. Let me -- let me change the question. Is there  
12 anything keeping New Mexico from broadening the  
13 Safe at Home program to reach additional people  
14 who don't want their voter data disclosed?

15 MS. LECOCQ: Objection.

16 **A. Yes.**

17 BY MR. GREIM:

18 Q. What?

19 **A. So I think that the statute surrounding the**  
20 **Safe at Home program is very specific to a**  
21 **certain population within the state of New**  
22 **Mexico.**

23 Q. Okay. And my question is: Is there anything  
24 stopping New Mexico from just broadening that  
25 population --

39 (Pages 150 to 153)

Page 154

1 MS. LECOCQ: Objection.  
 2 BY MR. GREIM:  
 3 Q. -- and saying there are other people now that  
 4 we want to let into the Safe at Home program?  
 5 **A. Sure. It's -- the Safe at Home program is not**  
 6 **specific to just voting, right; that's one**  
 7 **piece of that program. But it is a larger**  
 8 **program that is meant to support victims of**  
 9 **domestic violence. So it's not just a**  
 10 **confidential address necessarily. It is -- it**  
 11 **is not just specific to voting.**  
 12 Q. Okay.  
 13 **A. So there are implications for that population**  
 14 **outside of just voting.**  
 15 MR. GREIM: Okay. We've been going for  
 16 little over an hour. Why don't we take --  
 17 let's take one more break for maybe another ten  
 18 minutes.  
 19 (WHEREUPON, at this time a brief recess  
 20 was taken.)  
 21 BY MR. GREIM:  
 22 Q. All right. I think we're getting closer here  
 23 to the end. But I'm going to ask you about now  
 24 the denials of VRF requests for data over the  
 25 last year or two.

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1 I want to first know who was involved,  
 2 what staff were involved in the secretary's  
 3 office in responding to VRF requests for data.  
 4 **A. Myself and our attorneys.**  
 5 Q. Okay. You say our attorneys. Who are those  
 6 attorneys?  
 7 **A. Dylan Lange and representation from the**  
 8 **attorney general's office.**  
 9 Q. Okay. Okay. Now, when you say representation  
 10 from the attorney general's office, are you  
 11 talking about -- is that -- is the secretary of  
 12 state getting legal advice from the attorney  
 13 general's office about whether to respond to  
 14 requests?  
 15 MS. LECOCQ: Objection.  
 16 **A. With relation to this case?**  
 17 BY MR. GREIM:  
 18 Q. Okay. Well, let me -- I'm not going to ask you  
 19 the contents of the advice. I'm just wanting  
 20 to establish who is asking the question and,  
 21 you know, basically who is involved in the  
 22 communication, okay?  
 23 So we know the name of one attorney,  
 24 Lange, okay. And then when you say the AG's  
 25 office, I'm trying to make sure we're not just

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1 talking about litigation counsel who was always  
 2 up to speed presumably on what's happening. So  
 3 I'm trying to do with this without compromising  
 4 the privilege.  
 5 Is a request being made of the attorney  
 6 general's office about whether a response to a  
 7 document request is lawful or not?  
 8 MS. LECOCQ: Objection.  
 9 **A. A response to a document request from Voter**  
 10 **Reference Data -- I mean vote Voter Reference**  
 11 **Foundation --**  
 12 BY MR. GREIM:  
 13 Q. Right.  
 14 **A. Yeah, our -- Dylan Lange and our attorneys**  
 15 **representing us in this case.**  
 16 Q. Okay. So litigation counsel are -- the lawyers  
 17 in this case for the attorney general's office  
 18 are giving advice to the secretary of state  
 19 about responses to the requests?  
 20 MS. LECOCQ: Objection. Can we -- sorry,  
 21 can you just give me one second?  
 22 MR. GREIM: Sure.  
 23 MS. LECOCQ: I just want to state on the  
 24 record this is getting really close to -- and I  
 25 understand it's super tricky with the attorney

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1 general's office, but the attorney general's  
 2 office, by statute, represents these agencies.  
 3 So if what you're wanting her to answer is who,  
 4 I don't think we have any issue with that. I  
 5 think where it gets a little bit tricky is  
 6 any -- kind of anything beyond that, you know,  
 7 what questions were asked, what specific  
 8 topics, what's being sought, and that's really  
 9 what is, kind of, our objection.  
 10 MR. GREIM: I'm not going to be beyond  
 11 the question I just asked.  
 12 MS. LECOCQ: Okay.  
 13 BY MR. GREIM:  
 14 Q. Which is, you know, advice on responding to the  
 15 request, not asking what the advice was or what  
 16 questions were lodged. It's who at the AG's  
 17 office is giving advice on how to respond to  
 18 the VRF request. That's it.  
 19 **A. What individual?**  
 20 Q. Yes.  
 21 **A. Yeah, at the time was Olga.**  
 22 Q. Okay. And she was still there in November or  
 23 she was gone?  
 24 **A. I don't know the exact day, I'm sorry.**  
 25 Q. Okay. Was it anyone other than Olga?

40 (Pages 154 to 157)

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1 **A. No.**  
 2 Q. Okay.  
 3 **A. Just Dylan and Olga.**  
 4 **Q. Sharon Pino involved at all?**  
 5 **A. Yes.**  
 6 **Q. Okay. What was her role?**  
 7 **A. Again, it's a collaborative effort to kind of**  
 8 **understand all of the facts, have a**  
 9 **conversation, a discussion, and make a**  
 10 **determination. So she participated like the**  
 11 **rest of us.**  
 12 Q. Well, who made the final decision in the SOS's  
 13 office?  
 14 MS. LECOCQ: Objection.  
 15 **A. I don't think there was one single person. It**  
 16 **was, again, a collaborative decision.**  
 17 BY MR. GREIM:  
 18 Q. Okay. If you could, please go back and turn to  
 19 Exhibit 2, Interrogatory Number 15. It's on  
 20 page 9 -- 9 and 10 is where I want you to look.  
 21 Okay. And so you'll see Interrogatory Number  
 22 15, it says, "Identify each person who  
 23 participated in each decision not to provide  
 24 data in response to a VRF request or to ignore  
 25 a VRF request, and the person, if any, who made

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1 the final decision." And then it wants the  
 2 titles. That's the request.  
 3 And now let's go to the answer, next  
 4 page. "Subject to, and without waving  
 5 objections, the secretary states the secretary  
 6 never ignored a request." Is that correct?  
 7 **A. Yes.**  
 8 Q. Okay. "If such a request was received,  
 9 reviewed, and subsequently denied, the decision  
 10 to do so was made by Sharon Pino on advice of  
 11 counsel." Now, is that correct or no?  
 12 **A. I don't think it's incorrect. Again, you know,**  
 13 **we all had a role in making this decision. At**  
 14 **the end of the day, Sharon is deputy secretary**  
 15 **of state, so I don't think there's anything**  
 16 **incorrect here.**  
 17 Q. Okay. Just -- since Sharon Pino is the only  
 18 person to -- specifically mentioned here, it's  
 19 just odd that you didn't mention her in your  
 20 response and then you seemed to say she was  
 21 just part of the team. So I've got a response  
 22 from you and I've got a -- sort of a draft from  
 23 counsel. I just want to meld the two, if I  
 24 can.  
 25 I mean, do you -- does this statement

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1 need to be changed, decision to do so was made  
 2 by Sharon Pino?  
 3 **A. I think the only thing I would add is, you**  
 4 **know, probably upon advice of counsel and, I**  
 5 **guess, in consultation with myself.**  
 6 Q. Okay. And let me talk about the  
 7 decision-making process. Did it occur by  
 8 e-mail?  
 9 **A. No, I feel like it was a meeting, either**  
 10 **virtual -- it was a virtual meeting.**  
 11 Q. Okay. Because there were a couple of denials,  
 12 all right. And so each time there was nothing  
 13 committed to writing. It was all done orally?  
 14 **A. Yes.**  
 15 Q. Okay. So there will be no -- have you searched  
 16 for documents that discussed the decision?  
 17 **A. No, but I don't believe there to be any. I**  
 18 **recall the verbal conversations.**  
 19 Q. I mean, do you know all the decision -- all the  
 20 communications that Sharon Pino may have had  
 21 with others about it?  
 22 **A. I don't believe Sharon Pino had any additional**  
 23 **communications. The only thing I can't speak**  
 24 **to is if Dylan had any communications, but I**  
 25 **feel like the decision was made through a**

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1 **virtual meeting.**  
 2 Q. And the decision was not made by lawyers,  
 3 right, it was made by Sharon Pino?  
 4 **A. That's not what I said. I said it was made in**  
 5 **consultation with a group of us, including**  
 6 **guidance from our attorneys.**  
 7 Q. Okay. Well, I mean, was Sharon Pino the final  
 8 decision maker or no?  
 9 **A. I think what I asked to be changed in the**  
 10 **statement was that Sharon Pino, upon advice of**  
 11 **counsel, in consultation with Mandy Vigil.**  
 12 Q. Okay.  
 13 **A. So I think that represents my testimony.**  
 14 Q. Okay. Well, specifically, I'm going to be very  
 15 clear about this, the decisions were not  
 16 actually delegated to counsel; they were made  
 17 by you and Sharon Pino?  
 18 **A. Upon advice of counsel.**  
 19 Q. Upon advice of counsel?  
 20 **A. Yes.**  
 21 Q. Okay. Okay. Well, I'm about to ask you the  
 22 basis for the decision, okay? And I'm just  
 23 going to say this, I mean, I -- if you say, you  
 24 know -- if you say "We relied on counsel," then  
 25 I'm going to ask -- at that point I'm entitled

41 (Pages 158 to 161)



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1 to ask and I'm going ask what counsel advised,  
 2 one way or another, from you or from counsel.  
 3 If you just tell me the basis of the decision,  
 4 you don't need to tell me that, well, part of  
 5 this was what counsel wanted or this is -- and  
 6 you can protect the privilege by not explaining  
 7 to me what parts of what you tell me are from  
 8 an attorney. I'm just going to say that while  
 9 we're on --  
 10 MS. SCHREMMER: I object to your  
 11 definition about privileged communication.  
 12 BY MR. GREIM:  
 13 Q. I mean, maybe we have a dispute. We're about  
 14 to find out, I think. But I certainly don't  
 15 think any part of the reasoning -- the basis  
 16 for any of the decisions can be shielded  
 17 because a lawyer was involved. It's possible  
 18 to tell me the reasoning without saying, oh,  
 19 this is what our lawyer told us, but we'll see.  
 20 We'll let it play out if there needs to be an  
 21 objection and instruction.  
 22 MS. LECOCQ: Can you give me one second?  
 23 We might -- let me talk to Kelsey. And then I  
 24 might just give her a little bit of advice.  
 25 MR. GREIM: Sure. Okay. Let's go off

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1 the record for two minutes.  
 2 (WHEREUPON, at this time a brief recess  
 3 was taken.)  
 4 (WHEREUPON, Deposition Exhibit 7 was  
 5 marked for identification.)  
 6 BY MR. GREIM:  
 7 Q. Okay. I'm going to hand you what we've marked  
 8 as Exhibit 7, and you've seen this before. I'm  
 9 just going to ask you if you recognize this  
 10 e-mail?  
 11 A. I do.  
 12 Q. Okay. This is a Patrick Rostock e-mail to you  
 13 on March 11, 2022?  
 14 A. Yes.  
 15 Q. And it relates to ticket number 4148 (sic).  
 16 I'm just reading from the subject line,  
 17 "[External] Information Request," right?  
 18 A. Right.  
 19 Q. And you see there's a question from Voter  
 20 Reference Foundation at the bottom of the  
 21 e-mail chain?  
 22 A. Uh-huh.  
 23 Q. And then -- do you recall getting this e-mail?  
 24 A. Yes.  
 25 Q. Okay. What did you do in reaction to this?

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1 A. I reached out to Dylan.  
 2 Q. Okay. Did you ask him for legal advice of some  
 3 kind?  
 4 A. Yeah.  
 5 Q. Okay. Did he provide you legal advice in  
 6 response?  
 7 A. Yes.  
 8 Q. All right. And is the first line of this  
 9 e-mail correct for Dylan's contact with the AG,  
 10 "...we are not fulfilling records from VoteRef"  
 11 (verbatim)?  
 12 A. There was clarification related to voter data  
 13 requests, but, yes.  
 14 Q. Okay. And has this policy ever changed at the  
 15 secretary of state's office?  
 16 A. What policy?  
 17 Q. "Per Dylan's contact with the AG, we are not  
 18 fulfilling records request from VoteRef"?  
 19 A. I don't think it was a policy, but certainly it  
 20 is based on legal advice related to this case  
 21 and our understanding of the use of the data  
 22 that that's still the position we maintained.  
 23 Q. Okay. What will VRF need to do in order to  
 24 obtain voter information from the secretary of  
 25 state's office?

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1 A. I think it is going to need some clarity from  
 2 legal counsel to respond to that. I think it's  
 3 all relevant to this case in particular.  
 4 Q. Well, why can't VRF simply fill out the current  
 5 affidavit and receive voter data?  
 6 A. We have not stated that you cannot.  
 7 Q. Well, that's -- I'm asking you that. I'm  
 8 asking you, even if the current -- I mean, we  
 9 have a dispute about whether the current  
 10 affidavit actually follows New Mexico law, but  
 11 put that aside. If VRF simply fills out the  
 12 current affidavit for voter data, is there  
 13 any -- is there any reason that the secretary  
 14 of state's office wouldn't fill the request?  
 15 A. Again, I think barring any guidance from our  
 16 attorney related to this case, no. I think our  
 17 concern is relevant in that there's an  
 18 understanding that it will be posted online;  
 19 that's the concern.  
 20 Q. So even if VRF fills out an affidavit that says  
 21 "I won't share it on the Internet," VRF is not  
 22 going to get the data because of a concern that  
 23 it might show on the Internet anyway?  
 24 A. I don't think I said that.  
 25 Q. Well, I want to understand you.

42 (Pages 162 to 165)

Page 166

- 1 **A. So if VRF submits an affidavit and completes**  
 2 **it, I think there is a review of that affidavit**  
 3 **and a determination to provide the data.**  
 4 Q. When you say it --  
 5 **A. I don't think I've said that we wouldn't.**  
 6 Q. Okay. Well, that's important because I thought  
 7 my question actually posed that very  
 8 hypothetical, that VRF fills out the affidavit  
 9 and submits it to you. I just wonder if  
 10 there's any reason why the secretary of state  
 11 would still not produce the data.  
 12 **A. It would only be based on legal guidance.**  
 13 Q. Well, in other -- when you say only based on  
 14 legal guidance, you mean you're holding out  
 15 that attorneys might tell you not to produce  
 16 the data anyway?  
 17 **A. I think there's a potential, yes, based on**  
 18 **concerns of it being posted online.**  
 19 Q. Okay. So is VRF in a position where the  
 20 secretary of state doesn't feel that it can  
 21 trust VRF's affidavit?  
 22 MS. LECOCQ: Objection.  
 23 **A. What affidavit, I'm sorry?**  
 24 Q. The affidavit we've just been talking about.  
 25 **A. Ours, our prescribed form, completing it?**

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- 1 Q. Correct.  
 2 **A. But in that you are saying you're going to make**  
 3 **some sort of affirmation that you're not going**  
 4 **to put it online?**  
 5 Q. No, no. I'm saying if VRF -- I want to be  
 6 clear here. I thought we were, but I -- it  
 7 seems vague.  
 8 If VRF fills out the current affidavit --  
 9 on -- currently online, for the secretary of  
 10 state, is there any reason at all that the  
 11 secretary of state would cite to still refuse  
 12 to produce the voter data to VRF?  
 13 **A. And, again, I said as long as the form is**  
 14 **completed and we consult with our attorney, if**  
 15 **there is no concern related to it being posted**  
 16 **online, based on the circumstances of this**  
 17 **case, I foresee no reason to deny that.**  
 18 Q. Okay. Well, it's that middle hedge that is  
 19 very important in this case.  
 20 **A. Well, that's the reality.**  
 21 Q. Well, I mean, so would the secretary of  
 22 state -- so what you're telling me is, in fact,  
 23 the secretary of state would not simply produce  
 24 the data if it received an affidavit, it would  
 25 first talk to counsel and determine whether

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- 1 there was still a concern that VRF might post  
 2 the data online anyway?  
 3 **A. There's currently active litigation with Voter**  
 4 **Reference Foundation, so any interaction we**  
 5 **would engage with our legal counsel, yes.**  
 6 Q. Okay. So part of the -- so it sounds like part  
 7 of the block for VRF getting the data is the  
 8 fact that there's ongoing litigation, is that  
 9 correct?  
 10 **A. I don't know if there is a block. I'm saying**  
 11 **because there is active litigation, it is a**  
 12 **usual process to consult with our attorneys.**  
 13 Q. Okay, fair enough. But can the secretary of  
 14 state commit right here, right now, that if VRF  
 15 fills out the affidavit, as required by New  
 16 Mexico law, it will produce the data requested?  
 17 MS. LECOCQ: Objection.  
 18 **A. I think I have responded that because there's**  
 19 **an active litigation, that we would seek**  
 20 **guidance from our counsel.**  
 21 **(WHEREUPON, Deposition Exhibit 8 was**  
 22 **marked for identification.)**  
 23 BY MR. GREIM:  
 24 Q. I'm going to hand you what we've marked as  
 25 Exhibit 8. Do you recognize this document?

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- 1 **A. I do.**  
 2 Q. What is this?  
 3 **A. It is a request to our office for records.**  
 4 Q. Okay. And it is accompanied by -- something  
 5 might be wrong. Can I look at your version  
 6 quickly? It's accompanied by a couple of  
 7 affidavits, correct, under Exhibit B?  
 8 **A. Yes.**  
 9 Q. Now, take a second to look at these affidavits.  
 10 Is there anything irregular or altered in these  
 11 two affidavits?  
 12 **A. I don't believe this is our most current form.**  
 13 **I think this is an outdated version.**  
 14 Q. Okay. Is that a reason to reject a request?  
 15 **A. No.**  
 16 Q. And, in fact, do you recall when I asked you  
 17 this at your earlier testimony you stated that  
 18 secretary of state would accept all versions of  
 19 the form as it changed over time, right?  
 20 **A. Correct, as long as it provides the**  
 21 **information.**  
 22 Q. And is there anything lacking on these two  
 23 affidavits?  
 24 **A. No.**  
 25 Q. Okay. Now, this request was denied, right?

43 (Pages 166 to 169)

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1 **A. Yes.**  
 2 Q. I'm going to -- and one of the reasons was that  
 3 the secretary of state was concerned that VRF  
 4 was going to take the information and post it  
 5 online, right?  
 6 **A. Right.**  
 7 Q. Okay. And the basis for that was actually  
 8 something that I put in my letter, right?  
 9 **A. Basis for?**  
 10 Q. For the concern.  
 11 **A. Yes.**  
 12 Q. All right. And specifically it's page 4 of my  
 13 letter. Can you go to page 4?  
 14 **A. Okay.**  
 15 Q. And let's go to the third paragraph where I  
 16 talk about the request for records. And you'll  
 17 see that it's about two different projects,  
 18 above there, and then I say in my third  
 19 paragraph -- or, I'm sorry, the second full  
 20 unnumbered paragraph, "VRF's intended election  
 21 use comprises two distinct projects. For its  
 22 first project, just as VRF publishes voter data  
 23 for many other states, and as it recently  
 24 published voter data in New Mexico, VRF intends  
 25 to publish the requested information online for

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1 description, the second one has a different  
 2 one, right?  
 3 **A. One is asking for county and precinct, is that  
 4 the difference?**  
 5 Q. Right. So, I mean, if you look, the first one  
 6 says "Current voter registration data,  
 7 including voter history for all active,  
 8 inactive, suspended, and canceled status  
 9 voters," right, "(including any registration  
 10 status other than active)," that's the first  
 11 one?  
 12 **A. Uh-huh.**  
 13 Q. The second one says "A complete list, by  
 14 county/precinct of any registered voters who  
 15 cast a ballot in the November 3, 2020 general  
 16 election, who have subsequently been placed in  
 17 inactive, canceled, deleted, or removed status,  
 18 or any voter that has been removed or deleted  
 19 from the rolls."  
 20 So those are not asking for the same  
 21 data, are they?  
 22 **A. No.**  
 23 Q. All right. Fair enough. Okay. Let's come  
 24 back now to my letter. In my second paragraph  
 25 I say, "VRF intends to analyze the records,

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1 election related purposes, but will only  
 2 publish the personal information of voters  
 3 online if VRF is granted relief in..." and then  
 4 it cites this case, right?  
 5 **A. Uh-huh.**  
 6 Q. "...or any other legal proceeding."  
 7 Okay. So did the secretary of state's  
 8 office decide that it believed that statement  
 9 was truthful?  
 10 **A. No.**  
 11 Q. Did not doubt what I put in my letter?  
 12 **A. I don't think there was any discussion of  
 13 doubt.**  
 14 Q. Okay. Okay. And then we go to the fourth  
 15 paragraph, I talk now about the second project.  
 16 And it says, "For its second" -- and by the  
 17 way, data for the first project is in a  
 18 separate safety affidavit, isn't it? You see  
 19 there's two affidavits?  
 20 **A. There are two affidavits. I am not clear what  
 21 is specific to each project.**  
 22 Q. Okay. Okay. Well, that's all right. That's  
 23 all right. You see that each --  
 24 **A. They each ask for the same data.**  
 25 Q. Do you see the first one under "Other" has one

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1 information, and data provided in response to  
 2 the above requests in order to engage in a  
 3 discrepancy review of the New Mexico voter  
 4 rolls. VRF intends to publish this analysis  
 5 online without disclosing the personal  
 6 information of any individual voter."  
 7 Do you see that correct -- did I read  
 8 that correctly?  
 9 **A. I do.**  
 10 Q. Okay. And then I go on, just so it's clear,  
 11 "VRF will comply with this  
 12 non-public-disclosure promise for the data it  
 13 uses on its second project regardless of  
 14 whether it prevails in the federal litigation."  
 15 Did I read that right?  
 16 **A. You did.**  
 17 Q. "And again, for the sake of clarity, no  
 18 personal information of any individual voter  
 19 will be published online unless VRF is granted  
 20 relief in the federal litigation or in any  
 21 other legal proceeding."  
 22 Did I say that right?  
 23 **A. You read it correctly, yes.**  
 24 Q. And the secretary's position is that you didn't  
 25 know what I meant by personal information,

44 (Pages 170 to 173)

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1 right?

2 **A. Uh-huh.**

3 **Q.** And that what I have might have actually been

4 saying is that we are going to publish personal

5 information because I might have a really

6 narrow definition of what it means, right?

7 **A. Uh-huh.**

8 **Q.** Now, did anybody from the secretary's office

9 say -- it was an unclear phrase, right, that's

10 your position?

11 **A. I think we established that during this**

12 **testimony as well.**

13 **Q.** Right. And did anyone ever reach out to ask

14 Voter Reference Foundation, hey, we see this

15 phrase "personal information," you're

16 referencing the lawsuit, where we're actually

17 litigating this question, could you tell us

18 what you mean?

19 No one did that, did they, for VRF?

20 **A. I don't believe anyone from our office did.**

21 **Q.** No. And then, in court, VRF then stated that

22 we're not going to disclose name or address,

23 anything from which you could tell the identity

24 of any voter. We're just going to give the

25 analysis of what the discrepancy was. And at

Page 175

1 that point did the secretary of state's office

2 go back and say now we understand? We're no

3 longer concerned about posting personal

4 information online? Did that ever happen?

5 **A. We have not revisited this, no. I think,**

6 **again, the decision we've been discussing for**

7 **the past hour or so was based on guidance from**

8 **our counsel, based on pending litigation, and**

9 **the requests received, you know, in response to**

10 **this litigation.**

11 **Q.** So the reason why the secretary didn't go back

12 and produce the data, after getting the

13 explanation of personal information, was

14 because of the litigation, is that right?

15 **A. No, based on our outreach to our counsel,**

16 **because there is pending litigation. So we are**

17 **going to follow the guidance of our counsel.**

18 **Q.** Okay, I understand. And, unfortunately, I now

19 need to know the reason why you didn't do it.

20 I know you asked counsel. I need to now

21 understand why -- clarification. Because,

22 after that, you knew we weren't going to be

23 posting any personal information online, why

24 that wasn't good enough. What was still

25 missing at that point?

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1 **A. And when you say we knew, can you point me to**

2 **where we would know that?**

3 **Q.** Sure. You know, let's do it this way: Today,

4 does the secretary of state's office believe

5 that if we got -- if you fulfil this status

6 request tomorrow, maybe somebody saw this and

7 thought it was -- you know, they just answered

8 it. Do you believe that -- do you believe that

9 VRF would take the data and post the names,

10 addresses, year of birth, voter registration

11 information of voters online? Does the

12 secretary of state's office actually believe

13 that today?

14 **A. I don't think that's the question. I think --**

15 **Q.** I'm asking you that right now.

16 **A. I think it's broader than that, that's my**

17 **point. There's active litigation, and we have**

18 **to -- we have to deal with the reality. Our**

19 **office is currently engaged in important**

20 **litigation on this matter. We've received**

21 **guidance from our counsel, period.**

22 **Q.** Well --

23 **A. And same answer to your question about the**

24 **affidavit. This request is a request for the**

25 **same data, the same question that you asked me**

Page 177

1 **about the affidavit and that process and our**

2 **position would not change. Based on this**

3 **letter, it was an NVRA request for the**

4 **affidavit that was submitted.**

5 **Q.** I'm going to ask you a very different question.

6 Okay. My question is: Today, does the

7 secretary of state believe that if it produced

8 to us the data requested here, now that you've

9 heard what I've said -- actually, let me do

10 this. Let's back up.

11 I'm going to tell you -- this is not a

12 hypothetical, okay? I'm going to tell you that

13 if the secretary of state produces data in

14 response to this request, any other request

15 that comes in, using your affidavits, that

16 Voter Reference Foundation is not going to

17 publish any of the personal information of any

18 voter. I'm going to go a step further, just in

19 case you think I'm saying the opposite. It's

20 not going to post the voter's name, their

21 address, their voting history, their last four

22 of their Social Security number, their year of

23 birth. Can you name for me any other personal

24 information in the data set that people get?

25 Anything else that identifies an individual

45 (Pages 174 to 177)

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1 voter?

2 **A. Which question am I answering?**

3 Q. Well, I'm going to say -- I'm going to tell you

4 we're not going to post any of that data

5 online. I'm telling you that right now.

6 Knowing that, does the secretary of state have

7 any reason to believe that if you produced this

8 data tomorrow, that Voter Reference Foundation

9 will go and post the data online anyway?

10 MS. LECOCQ: Objection.

11 **A. I think what I can respond to is that that is**

12 **the same kind of position that you had, right,**

13 **the same question you asked me about the**

14 **affidavit, and based on our analysis and**

15 **guidance from our attorney, our position has**

16 **not changed. So, again, it would require, you**

17 **know, guidance from our attorneys based on this**

18 **pending litigation if we received a new request**

19 **from you.**

20 BY MR. GREIM:

21 Q. Okay. Now I'm going to ask you: Does the

22 secretary of state believe that if you make a

23 response tomorrow to us, that we are going to

24 take the information of the voters, the

25 individual information for each voter, and put

Page 179

1 it online?

2 **A. I don't know.**

3 Q. So you think it's possible they'll do it

4 anyway?

5 **A. I think that it's an analysis that was taken**

6 **based on your position. I don't think your**

7 **position has changed. And we have received**

8 **guidance that it is in our best interest to**

9 **protect our position and so, therefore, we**

10 **didn't provide it.**

11 Q. I'm not asking --

12 **A. I don't think anything has changed, therefore**

13 **nothing would change in our response.**

14 Q. Okay. So even me telling you every category

15 that will not be put online, the position

16 remains that the secretary of state believes

17 that VRF may put it online anyway? You don't

18 know? You don't know? You think we might,

19 right?

20 **A. I think there's a concern.**

21 Q. Okay. Is there anything Voter Reference

22 Foundation can do to get rid of that concern?

23 Is there anything at all it can do?

24 MS. LECOCQ: Objection.

25 **A. Are you asking for my personal --**

Page 180

1 BY MR. GREIM:

2 Q. I'm asking for office's position.

3 **A. You know, I think that I don't have anything to**

4 **point to. I think it's all a matter of getting**

5 **to the end of this litigation so that we all**

6 **have clarity.**

7 Q. So the litigation will need to end before you

8 can answer that question?

9 **A. I don't know. Again, you know, nothing has**

10 **changed up to this point.**

11 Q. Okay.

12 **A. So until something were to change and we got**

13 **different guidance, I don't have a different**

14 **answer.**

15 Q. So it's kind of what the lawyers say?

16 **A. Yes.**

17 **(WHEREUPON, Deposition Exhibit 9 was**

18 **marked for identification.)**

19 BY MR. GREIM:

20 Q. Well, let's go to our next exhibit. I'm

21 handing you what we're marking as Exhibit 9.

22 You'll see this is a Dylan Lange letter. It's

23 actually an e-mail attaching a letter to Voter

24 Reference Foundation and it copies you. Do you

25 recognize this document?

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1 **A. Give me just a second. I recognize the**

2 **document.**

3 Q. Okay. Did you -- who was involved in drafting

4 this document?

5 **A. I know that I spoke to Dylan about it. Dylan**

6 **drafted the document, and I know that we**

7 **discussed it with Sharon.**

8 Q. So is it fair to say that Sharon and you both

9 approved this document before it went out the

10 door?

11 **A. Yes, and also, at the time, Olga.**

12 Q. And Olga, okay. You understood that she was

13 advising on behalf of the attorney general's

14 office, correct?

15 **A. Right.**

16 Q. Okay. So it looks to me like on October 18,

17 2022, Gina Swoboda, VRF, made a request for

18 about five categories of items. And then this

19 response was made on November 17th, about a

20 month later, right?

21 **A. Right.**

22 Q. Okay. And Ms. Swoboda, on behalf of VRF, made

23 this request under both the NVRA and the New

24 Mexico Public Records Law, right?

25 **A. Correct.**

46 (Pages 178 to 181)



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1 Q. So let's go to Mr. Lange's -- and by the way,  
2 you agreed with everything in Mr. Lange's  
3 response?

4 **A. I do.**

5 Q. Okay. I'm going to ask you now about these  
6 items. So Mr. Lange says, "To begin with,  
7 request number 3 is a request for future data  
8 that does not/did not exist at the time of your  
9 request, and we cannot fulfil requests in  
10 perpetuity." That means can't ful- -- you  
11 can't make a request for the future, way in the  
12 future, and just keep expecting to be billed,  
13 right?

14 **A. Uh-huh.**

15 Q. Okay. Is that what VRF did here?

16 **A. Yes.**

17 Q. Well, let's look at the request. So number 3,  
18 is "Voter registration data for all voters  
19 removed or canceled from any list between  
20 September 24, 2022," right, "and December 15,  
21 2022." And so part of that time is into the  
22 future, right?

23 **A. Uh-huh.**

24 Q. But part of it already existed when the request  
25 is made, right?

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1 **A. That is the request.**

2 Q. You do that for everybody?

3 **A. We respond to the request, yes.**

4 Q. You understand -- you don't -- you're not  
5 arguing that VRF asked for data in perpetuity,  
6 are you?

7 **A. I just said that I agreed with this statement  
8 made by Dylan in this letter. So I do believe  
9 it was asking future data.**

10 Q. Well, I'm not asking future. I'm asking in  
11 perpetuity. VRF is not asking for data in  
12 perpetuity, is it?

13 **A. I don't see that.**

14 Q. Okay. Let's now go to the second paragraph.  
15 It says, "Additionally, we will refrain from  
16 producing any responsive voter data maintained  
17 by our office at this time due to numerous  
18 issues further detailed below." It says that,  
19 right?

20 **A. Yes.**

21 Q. And let's just march through those. He says,  
22 "To begin with, this decision is motivated by  
23 the fact that you will post any voter data  
24 provided on your website, which our office  
25 believes is a violation of law."

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1 **A. But the ask was for a window of time.**

2 Q. Sure. But is there any reason not to just to  
3 give the data that you do have from  
4 September 24th to the date of the response?

5 MS. LECOCQ: Objection.

6 **A. Our position and our process across the board  
7 is to respond to requests, to respond to the  
8 request that was made. And we could not  
9 because that window of time didn't exist at  
10 that time.**

11 BY MR. GREIM:

12 Q. Okay. So if somebody were to ask you -- let me  
13 ask you this: What if the request was  
14 through -- from September 24th of 2022 to  
15 November 17, 2022, would you say we're going to  
16 not respond to that request because on  
17 October 18th it wasn't November yet?

18 MS. LECOCQ: Objection.

19 BY MR. GREIM:

20 Q. I mean, I'm just trying to understand the  
21 principle here.

22 **A. The request was for future data that we did not  
23 have. So if it was asking for future data, we  
24 do not have it.**

25 Q. You reject the entire request then?

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1 Now, on what basis did the secretary of  
2 state believe on November 17th that Voter  
3 Reference Foundation was just going to post  
4 whatever it got on its website?

5 **A. Because it had occurred.**

6 Q. Did you consider any statements that Voter  
7 Reference Foundation or its counsel -- promises  
8 that counsel made in open court afterwards,  
9 were those considered?

10 **A. What is the date? Maybe we can clarify the  
11 date. Was this letter before or after that  
12 hearing?**

13 Q. This was in November, and this issue was  
14 discussed -- you know, I hate to start making  
15 representations without the transcripts here.  
16 There were no hearings after November 17th,  
17 I'll just tell you that.

18 So, I mean, my question is: On  
19 November 17th it sounds like the only data  
20 point for the secretary of state's office was  
21 that at one time VRF had posted data on its  
22 website.

23 **A. And I think I've spoken to that concern.  
24 Because it had been posted online, that was a  
25 concern to us.**

47 (Pages 182 to 185)

Page 186

1 Q. And any promises VRF made not to post on its  
2 website were not relevant, is that right?  
3 MS. LECOCQ: Objection.  
4 **A. Again, the decision was made on past practice.**  
5 BY MR. GREIM:  
6 Q. Okay. I understand that. My question is  
7 whether it's relevant when Voter Reference  
8 Foundation comes to you directly and says it  
9 will not post data online?  
10 **A. Clearly -- my understanding, just to make sure**  
11 **I have the timeline correct, this request came**  
12 **to us after the hearing in which you made those**  
13 **statements, correct?**  
14 Q. Yeah, it definitely did.  
15 **A. Okay. So our position, as outlined in this**  
16 **letter, was that based on past practice and**  
17 **concerns that it was going to be posted, we**  
18 **were not going to provide the data.**  
19 Q. And I'm just trying to understand what weight,  
20 if any, you gave to VRF's direct statements  
21 that it would not do so? Did you give that  
22 statement any weight?  
23 **A. I think we consider all things, right, but at**  
24 **the end of the day --**  
25 Q. Did you consider it?

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1 **A. -- we have obligation to protect what we**  
2 **believe is folks' privacy and to maintain their**  
3 **opportunity to participate in the process. So**  
4 **as I stated consistently, you know, at the**  
5 **hearing, again today, in our responses, our**  
6 **concern, based on past practice, was that this**  
7 **data was going to be posted online.**  
8 Q. So when --  
9 **A. And there was a decision not to provide the**  
10 **data.**  
11 Q. So when will VRF's past practice of posting the  
12 data stop counting against it when it makes  
13 data requests?  
14 MS. LECOCQ: Objection.  
15 **A. I don't even know how to answer that question.**  
16 BY MR. GREIM:  
17 Q. Okay. Did you consider the fact that VRF  
18 posted data after obtaining an injunction from  
19 the Court? Did that concern you as well?  
20 **A. Did I what, I'm sorry?**  
21 Q. You're saying you were considering past  
22 practices. Was one of the past practices that  
23 you considered the fact that VRF reposted the  
24 data after getting an injunction from the  
25 Court?

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1 MS. LECOCQ: Objection.  
2 **A. When was that? I'm just trying to get that in**  
3 **my mind at this point.**  
4 BY MR. GREIM:  
5 Q. July, the Court told us not to repost it.  
6 **A. 2022, and you reposted it, correct? And so**  
7 **then it was posted at the time of this request**  
8 **for more data.**  
9 Q. It was, yes.  
10 **A. So, yes. So after a promise not to post it, it**  
11 **was reposted, and then we get a request for**  
12 **more data, absolutely.**  
13 Q. Now, do you recall that the promise not to post  
14 it was unless or until we got relief from the  
15 Court? Do you recall that? We can go back and  
16 look at the letter. Let's go back.  
17 **A. That's fine. I get that you're going to do**  
18 **what the Court allows you to do.**  
19 Q. Right. But nonetheless, there was a dock  
20 against VRF when deciding whether to -- whether  
21 to --  
22 **A. I think that's a very clear indication of the**  
23 **intention of the use of the data.**  
24 Q. Okay. And so, now, how do you factor in the  
25 fact that after the Court of Appeals stayed the

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1 injunction VRF immediately took it down?  
2 **A. Because it's a court order, not out of respect**  
3 **for the state law or our position or our**  
4 **policy.**  
5 Q. Because we had to?  
6 **A. Yes.**  
7 Q. Okay, got it. But do you believe VRF will  
8 maybe even post it without a court order?  
9 **A. Post what without a court order?**  
10 Q. Voter data.  
11 **A. That if the Court says you cannot?**  
12 Q. Right.  
13 **A. If the Court says you cannot, no.**  
14 Q. Do you believe that while the issue is still  
15 pending, VRF might just decide to start posting  
16 again?  
17 **A. I think without a court order, I think their**  
18 **intention is to post that data, yes.**  
19 Q. Oh, so you believe VRF is going to -- you  
20 believe VRF will post voter data even without a  
21 court order?  
22 **A. I don't think I said that.**  
23 Q. Okay. I thought I -- I could have sworn you  
24 said that.  
25 **A. No.**

48 (Pages 186 to 189)

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1 Q. So even while this case is pending, do you  
2 believe VRF is going to repost data?  
3 **A. I think without a court order that prohibits**  
4 **the posting of data, VRF has demonstrated that**  
5 **its intention is to post the data.**  
6 Q. Okay. The next thing is, finally, on  
7 November 10, 2022 -- I'm back to Exhibit 9. On  
8 November 10, 2022, we filed a motion to stay --  
9 second paragraph. I'm kind of at the bottom of  
10 that second one. "We filed a motion to stay  
11 the preliminary injunction pending appeal...  
12 ...and do not think it is appropriate to  
13 produce voter data until the Court has ruled on  
14 the motion."  
15 Did I read that right?  
16 **A. You did.**  
17 Q. Okay. Why not?  
18 **A. Why do we feel like it's not appropriate?**  
19 Q. Yes.  
20 **A. Because we feel like it's against the law.**  
21 Q. Right. But -- so -- oh, so you -- is it the  
22 secretary of state's position that it is  
23 actually against the law to produce data to  
24 VRF?  
25 **A. No.**

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1 Q. Okay. So I'm asking you why the secretary of  
2 state says that "We do not think it is  
3 appropriate to produce voter data until the  
4 Court has ruled on the motion"?  
5 **A. We appealed -- we were in the process of**  
6 **appealing because we felt like posting it**  
7 **online was against state law --**  
8 Q. Okay. But --  
9 **A. -- is against state law.**  
10 Q. So what was inappropriate about just producing  
11 data to VRF at this time?  
12 **A. The knowledge that it was going to be posted**  
13 **online.**  
14 Q. Okay. Well, let's talk about this. Did the  
15 order allow VRF to post all data online or just  
16 some data?  
17 **A. I don't know.**  
18 MS. LECOCQ: Objection.  
19 BY MR. GREIM:  
20 Q. Okay. Well, we may have to actually pull it  
21 out. Did the secretary of state recall that  
22 the order only related to the data that VRF had  
23 already received?  
24 **A. I'd have to look at the order.**  
25 Q. I think we're going to have to pull the order

Page 192

1 up. While we're doing that, let me make sure I  
2 understand. The inappropriateness here in this  
3 sentence relates to another concern that  
4 without a definitive win in the Court of  
5 Appeals, VRF might start posting even new data  
6 on the Internet, is that right? Let me  
7 rephrase that.  
8 The inappropriateness you're referring to  
9 here is the secretary of state's concern that  
10 unless and until the secretary of state got a  
11 definitive win in the Tenth Circuit that VRF  
12 might just post any data it got online?  
13 MS. LECOCQ: Objection.  
14 BY MR. GREIM:  
15 Q. Is that the concern?  
16 **A. The concern was that VRF had posted data. We**  
17 **understand that they had an intention to post**  
18 **data, and they're asking for updated data, so,**  
19 **yes, there is a concern that it would be**  
20 **posted.**  
21 Q. Okay. I'm just going to read to you -- you're  
22 not in a good position for me to tilt the  
23 computer around. I'm looking at DOC 51,  
24 page 210. And it says, "It is ordered that (i)  
25 the Plaintiffs' motion for preliminary

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1 injunction is granted in part; (ii) that AG  
2 Balderas and Defendant SOS Oliver are enjoined  
3 from prosecuting Plaintiff VRF for publish-" --  
4 okay, this is all one thing -- "are enjoined  
5 from prosecuting Plaintiff Voter Reference  
6 Foundation under N.M.S.A. 1-4-5.5 or 1-4-5.6  
7 for publishing data it already received from  
8 Local Labs."  
9 Okay. So does that refresh your  
10 recollection that the order only went to the  
11 data we already received?  
12 MS. LECOCQ: Objection.  
13 **A. I mean, I heard you. Now I know what it says.**  
14 BY MR. GREIM:  
15 Q. Okay. So is it possible that the secretary of  
16 state -- I mean, you're here not as yourself  
17 but for the secretary of state, did not know  
18 that the injunction only related to the data  
19 that VRF had received from Local Labs?  
20 MS. SCHREMMER: Objection.  
21 **A. It's possible. But I guess also, you know,**  
22 **when I hear that statement all along, right,**  
23 **there's 200 and something other pages to**  
24 **consider in that order, so I am going to,**  
25 **obviously, rely on an attorney to read that in**

49 (Pages 190 to 193)

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1 its entirety. So it already received, does  
2 that mean the fields? Does that mean only from  
3 a certain date and time? I don't think that's  
4 clear.

5 BY MR. GREIM:

6 Q. Okay. So the secretary of state thought that  
7 the injunction was unclear?

8 MS. SCHREMMER: Objection.

9 **A. I think that statement you just read that**  
10 **you're asking me respond to is unclear, as I**  
11 **think there is a much larger document that was**  
12 **reviewed and considered by our legal counsel.**

13 BY MR. GREIM:

14 Q. Okay. Well, let me just ask you. I want to  
15 make sure I fully understand the meaning of  
16 this last phrase about "do not think it's  
17 appropriate to produce voter data." Is there  
18 any other concern about appropriateness there  
19 other than the fear that VRF was going to take  
20 the new data and post that online?

21 **A. It was the belief, based on past practice, that**  
22 **it was going to post the new data online, and**  
23 **also the fact that we were appealing that**  
24 **decision that provided opportunity to post.**

25 **Q. So why would the appeal make a difference? I'm**

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1 Q. Okay. And so, I mean, the Tenth Circuit  
2 decision isn't decided now either, right?  
3 Still waiting?

4 **A. We are still waiting.**

5 Q. Okay. Well, actually, let's be clear. What  
6 you cite here is the motion to stay the  
7 preliminary injunction --

8 **A. Correct.**

9 Q. -- right? Well, that was granted.

10 **A. Yes.**

11 Q. So does that change this sentence? Would you  
12 now produce the data because the motion to stay  
13 was granted, or would you be less inclined to  
14 produce the data because the motion to stay was  
15 granted?

16 **A. I think as I stated before, you know, there**  
17 **hasn't been a significant change in the facts,**  
18 **right, so there's not a change in your**  
19 **position, not a change in our position, no.**

20 Q. Well -- okay. But the letter cites the motion  
21 to stay, as a fact that it's pending, as a  
22 reason not to produce the data, and so the  
23 motion to stay has been decided, it has been  
24 granted. And so now that something -- that has  
25 changed, the thing cited here has changed. And

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1 trying to understand why would the fact of the  
2 appeal keep VRF from being able to get data?

3 MS. LECOCQ: Objection.

4 BY MR. GREIM:

5 Q. Why did the secretary of state think that the  
6 appeal mattered?

7 **A. It mattered because we believed that posting it**  
8 **online is contrary to what the law allows.**

9 Q. But was the secretary of state going to get a  
10 decision from the Tenth Circuit that VRF can  
11 never post the data online? Was that even a  
12 possibility on the appeal?

13 **A. We believe that is a possibility.**

14 Q. Okay.

15 **A. We believe that we are following the law.**

16 Q. Okay.

17 **A. That's it.**

18 Q. Okay. So the secretary of state -- I'm just --  
19 believes that it might win in the Tenth  
20 Circuit, and the Tenth Circuit might say, "VRF,  
21 you can't post this online at all," and you  
22 thought you needed to wait to see what the  
23 Tenth Circuit said, is that right?

24 **A. In part, and the past practice of reposting**  
25 **online, yes.**

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1 so my question is which way does that cut?  
2 Does it make it -- is the secretary of state  
3 more inclined to release the data after having  
4 won the motion to stay or less inclined  
5 to release the data?

6 **A. I don't have an updated response from the**  
7 **office on that item.**

8 Q. Okay. I'm going to be adding that to the list  
9 of things that we don't have an answer to and  
10 this may require counsel being involved. I'd  
11 like to understand that. We need to understand  
12 what this letter means.

13 Okay. The next -- we can keep moving  
14 through. The next paragraph says that you have  
15 not submitted the required affidavit and it  
16 cites -- oh, here, it actually cites the  
17 injunction, so it cites part of the injunction.  
18 So is the lack of an affidavit one of the  
19 reasons for rejecting the request?

20 **A. Absolutely.**

21 Q. Even had there been an affidavit attached, it  
22 still would have been rejected, though,  
23 correct?

24 **A. I think we don't know that answer because we**  
25 **didn't receive one, right?**

50 (Pages 194 to 197)

Page 198

1 Q. No -- well --  
 2 **A. But based on what we do know at this -- are we**  
 3 **asking about this point in time?**  
 4 Q. Yes.  
 5 **A. Yes.**  
 6 **Q. Okay. It would have been rejected even with**  
 7 **the affidavit?**  
 8 **A. Yes.**  
 9 Q. Okay. And then finally at the very end you say  
 10 that if the Court orders you to produce it, you  
 11 will, right?  
 12 **A. Right.**  
 13 Q. That remains true?  
 14 **A. Correct.**  
 15 **(WHEREUPON, at this time a discussion was**  
 16 **held off the record.)**  
 17 BY MR. GREIM:  
 18 Q. I have one more question about Exhibit 9 -- a  
 19 different part -- I'm sorry, this is Exhibit 8.  
 20 Let's go back here. Exhibit 8 does double  
 21 duty. It is a request for -- it attaches a  
 22 request for records and it also provides a  
 23 notice of violation. Do you see the bolded  
 24 section in the beginning? There's some  
 25 indentation problems there, but it says "Notice

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1 So your counsel may have an objection  
 2 that I can't ask this question or that you  
 3 don't need to give me an answer, but I'm just  
 4 going to ask it on the record. Does the  
 5 secretary of state contend that there is  
 6 anything defective in this notice of violation  
 7 of the NVRA?  
 8 MS. LECOCQ: Objection. You can answer.  
 9 **A. I don't know.**  
 10 MR. GREIM: Now we can take our break.  
 11 (WHEREUPON, at this time a brief recess  
 12 was taken.)  
 13 BY MR. GREIM:  
 14 Q. All right. Before we leave our last topic, the  
 15 denials of records, we talked, Ms. Vigil, about  
 16 the reasons for the secretary of state denying  
 17 the requests that I made in May and then we  
 18 talked again about the denials of the November  
 19 requests. I just want to make sure we're not  
 20 missing any of the reasons for the denials of  
 21 the requests.  
 22 **A. I mean, it was made in October, right?**  
 23 Q. Yeah, made in October, that's right. And so  
 24 maybe if we can go back to Exhibit 8, we talked  
 25 about the statements regarding personal

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1 of Violation of National Voter Registration Act  
 2 and Request for Records," do you see that?  
 3 **A. I do.**  
 4 Q. Okay. Now, one thing we're asking for the  
 5 secretary of state's position on in this case  
 6 is whether there was any information missing  
 7 from this notice. Is there anything in here  
 8 that it is claiming should have been inserted  
 9 into this notice to make it a proper notice?  
 10 And my question is: Is there anything missing  
 11 in the notice?  
 12 **A. A proper notice of NVRA violation?**  
 13 Q. Uh-huh.  
 14 **A. I don't know what's required of the notice of**  
 15 **an NVRA violation.**  
 16 Q. Did you do anything before the deposition today  
 17 to explore that topic?  
 18 **A. Compliance with federal law from your**  
 19 **organization?**  
 20 Q. No, no. Let's -- I mean, I can -- we can go  
 21 back to the -- we can go back to the notice.  
 22 Let's see here. Oh, it's the admissions and  
 23 denials and responses to discovery. Okay.  
 24 Well, we asked you a question about whether  
 25 this notice was proper.

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1 information, not publishing it online, and --  
 2 but I skipped over, kind of, the second of the  
 3 two projects. And so I list in this request  
 4 two different projects that we were going to do  
 5 with the data. And you'll see the first one is  
 6 this complete list by county precinct -- I'm  
 7 sorry. These are two sets of data. And the  
 8 second one is the current voter registration  
 9 data.  
 10 And then I go in and mention the two  
 11 projects. At the very bottom I say for a  
 12 second project VRF intends to analyze basically  
 13 the data or to engage in a discrepancy review  
 14 of the voter rolls. Do you remember reading  
 15 over that earlier?  
 16 **A. Yes.**  
 17 Q. And I just wanted to know, earlier I think you  
 18 testified that some of the misinformation that  
 19 the secretary thinks that VRF was engaging in  
 20 was that discrepancy analysis and its  
 21 statements about that, which would have been  
 22 back in late 2021. And so before I ask a  
 23 question, I just want to make sure that you're  
 24 tracking with me. Do you recall testifying  
 25 earlier about the secretary's concern that the

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<p style="text-align: right;">Page 222</p> <p>1        <b>don't believe the AG's office has shared any</b></p> <p>2        <b>feedback on the amendment.</b></p> <p>3        BY MR. GREIM:</p> <p>4        Q. Okay. But back to the question that I asked,</p> <p>5        which is not about the response to this, my</p> <p>6        question is whether the secretary of state's</p> <p>7        office, okay, your office, is supporting these</p> <p>8        particular amendments in order to impact the</p> <p>9        current litigation?</p> <p>10       MS. LECOCQ: Objection.</p> <p>11       <b>A. No.</b></p> <p>12       MR. GREIM: We're all set. We're done</p> <p>13       here.</p> <p>14       THE COURT REPORTER: Erin, would you like</p> <p>15       a copy?</p> <p>16       MS. LECOCQ: Yes.</p> <p>17       MR. GREIM: We are asking for a rough by</p> <p>18       Thursday, and they may also want the same.</p> <p>19       MS. LECOCQ: Yeah, we would like that,</p> <p>20       too.</p> <p>21</p> <p>22       (Deposition concluded at 6:53 p.m. EST.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 224</p> <p>1       STATE OF INDIANA    )</p> <p>2                                  ) SS:</p> <p>3       COUNTY OF JOHNSON    )</p> <p>4</p> <p>5       CERTIFICATE</p> <p>6</p> <p>7       I, Valerie Fillenwarth, RPR, a Notary</p> <p>8       Public in and for the County of Johnson, State</p> <p>9       of Indiana, maintaining an office in Johnson</p> <p>10       County, Indiana, do hereby certify the</p> <p>11       following:</p> <p>12</p> <p>13       That the witness herein, MANDY VIGIL, was</p> <p>14       first duly sworn to tell the truth, the whole</p> <p>15       truth and nothing but the truth in the</p> <p>16       foregoing deposition;</p> <p>17</p> <p>18       That all testimony was taken down in</p> <p>19       stenographic notes and afterward reduced to</p> <p>20       typewritten form under my direction and then</p> <p>21       presented to counsel for the purpose of</p> <p>22       obtaining the deponent's signature;</p> <p>23</p> <p>24       That I recorded and transcribed any and</p> <p>25       all objections made by counsel and the reasons</p>
<p style="text-align: right;">Page 223</p> <p>1       ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3       I, MANDY VIGIL, do</p> <p>4       hereby certify that I have read the</p> <p>5       foregoing pages, and that the same is</p> <p>6       a correct transcription of the answers</p> <p>7       given by me to the questions therein</p> <p>8       propounded, except for the corrections or</p> <p>9       changes in form or substance, if any,</p> <p>10       noted in the attached Errata Sheet.</p> <p>11</p> <p>12</p> <p>13</p> <p>14       _____</p> <p>15       MANDY VIGIL                      DATE</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 225</p> <p>1       therefore; and</p> <p>2</p> <p>3       That I am not a relative or employee,</p> <p>4       attorney or counsel of any of the parties, nor</p> <p>5       a relative or employee of such attorney or</p> <p>6       counsel, nor am I financially interested in</p> <p>7       this action.</p> <p>8</p> <p>9       IN WITNESS WHEREOF, I have hereunto set my</p> <p>10       hand and affixed my Notarial Seal this 16th day</p> <p>11       of March 2023.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16       Valerie Fillenwarth, RPR</p> <p>17       Notary Public</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23       My County of Residence is: Johnson</p> <p>24       Commission Number: NP0669434</p> <p>25       My Commission Expires: June 22, 2023</p>

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